

OREGON BULLETIN

Supplements the 2004 *Oregon Administrative Rules Compilation*

Volume 43, No. 8
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For June 16, 2004–July 15, 2004



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Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule's "History"

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

Locating the Most Recent Version of an Administrative Rule

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

Locating Administrative Rules Unit Publications

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

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. 04-06

DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN BAKER COUNTY DUE TO DROUGHT AND LOW WATER CONDITIONS

Pursuant to ORS 401.055, I find that ongoing drought and low water conditions and weather patterns have the potential to cause an imminent natural and economic disaster in Baker County (the "Effected County"). 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 Effected County's 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 Effected County, I am therefore declaring a "state of drought emergency" in the Effected County 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 to effect agricultural recovery in the Effected County.

II. The Department of Water Resources is directed to coordinate and provide assistance and regulation for the Effected County 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 Effected County.

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 Effected County.

V. This Executive Order expires on December 31, 2004

Done at Salem, Oregon this 11th day of June, 2004.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

OTHER NOTICES

A CHANCE TO COMMENT ON... PROPOSED AGREEMENT TO PERFORM REMEDIAL ACTION, PORT OF PORTLAND TERMINAL 4 SLIP 3 UPLAND FACILITY, PORTLAND, OREGON

COMMENTS DUE: August 31, 2004

PROJECT LOCATION: 11040 N. Lombard Street, Portland, Oregon

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.325, the Department of Environmental Quality (DEQ) invites public comment on DEQ's proposed consent decree and associated scope of work to implement the remedial action for the Port of Portland Terminal 4 Slip 3 upland facility (T4 Slip 3 Upland), which occupies approximately 50 acres within the Port's Terminal 4. The consent decree specifies the work that the Port will perform and provides for DEQ approval of remedial action activities.

HIGHLIGHTS: Union Pacific Railroad (UPRR) owned and operated the T4 Slip 3 Upland as early as 1906. UPRR used a steel pipeline to transfer diesel fuel and oil from marine vessels at Slip 3 to bulk storage tanks located east of the site at the former UPRR St. Johns Tank Farm. The facility and associated pipelines were leased and operated by Chevron from 1969 to 1983 when petroleum transfer and storage operations ceased. Seeps of petroleum have been observed at the east end of Slip 3, resulting from diesel releases along the subsurface petroleum pipelines. Several interim actions have been attempted to prevent diesel from impacting surface waters in Slip 3; nevertheless, petroleum product remains in the upland subsurface, acting as a source of contamination to surface water and sediment in the slip. The Port completed a remedial investigation for the site in January 2000 and a feasibility study to evaluate cleanup options in July 2002. DEQ selected the remedial action through a Record of Decision in April 2003. The selected remedy includes removal of petroleum product, excavation of contaminated soil in the Slip 3 riverbank, and groundwater monitoring.

HOW TO COMMENT: Copies of the proposed consent decree and associated scope of work are available for public review by appointment at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201, or through DEQ's web site at www.deq.state.or.us/nwr. To schedule a file review appointment, call: 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471.

Please send written comments to Tom Roick, Project Manager, at the address listed above or via email at roick.tom@deq.state.or.us. DEQ must receive written comments by 5 p.m. on August 31, 2004. Upon written request by ten or more persons or by a group with a membership of 10 or more, DEQ will hold a public meeting to receive verbal comments. Please notify DEQ of any special physical or other accommodations you may need due to a disability, language accommodations, or if you need copies of written materials in an alternative format (e.g. Braille, large print, etc). To make these arrangements, contact DEQ's Office of Communications and Outreach at 503-229-5317.

THE NEXT STEP: DEQ will consider all public comments on the proposed consent decree prior to determining to enter the decree. Subject to consideration of public comments, DEQ and the Port of Portland will execute the decree and file it with the Multnomah County Circuit Court.

PROPOSED REMEDIAL ACTION AT THE FORMER CHEVRON BULK PLANT NO. 100-1916 AND PIPELINE TERMINAL, BAKER CITY, OREGON

COMMENTS DUE: Public comment period extended until August 31, 2004

PROJECT LOCATION: 3370 17th Street, Baker City, OR

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to approve a remedial action for the groundwater consumption or exposure pathway at the Former Chevron Bulk Plant

#100-1916 and Chevron Pipeline Terminal located at 3370 17th Street in Baker City, Oregon.

HIGHLIGHTS: The DEQ Voluntary Cleanup Program has reviewed the information gathered during the site investigation and groundwater monitoring activities performed at the site. With the closure of bulk plant and pipeline terminal operations, the removal of the storage tanks, and re-routing of the pipeline, future releases are unlikely. Approximately 7,300 cubic yards of petroleum contaminated soil was excavated, treated and re-used on site. Extensive groundwater data has been collected since 1990. Based on the current and reasonable likely future land use within the vicinity of the site, the potential exposed populations evaluated were on-site workers, trench workers, and off-site residents. The primary exposure routes included groundwater ingestion, dermal exposure to groundwater and inhalation of volatiles from groundwater. The risk assessment concluded that unacceptable risks and hazards for on-site workers and off-site residents are present if groundwater is used for domestic use (i.e. drinking water). The primary drivers are benzene and naphthalene. All other exposure routes evaluated were determined to be acceptable, although subsequent sampling has demonstrated a need for additional assessment of the inhalation pathway at one adjacent residence.

An institutional control (i.e. deed restriction) in the form of an Easement and Equitable Servitude (E&ES) is the proposed remedy for the site. This alternative relies on natural degradation and specifies deed restrictions on the site and specific properties in the vicinity of the site. The deed restriction will prohibit property owners from using existing wells or installing new wells for the purpose of domestic use. Groundwater would be monitored on an annual basis. The site will remain listed on the Confirmed Release List and Inventory of Hazardous Substances.

This proposed remedy does not address the potentially complete inhalation pathway present at one adjacent residence. Additional monitoring will be necessary prior to determining if remedial measures are necessary to address inhalation concerns at the residence. If remedial measures are necessary to address the inhalation pathway, an additional staff report and Record of Decision will be prepared to address the specific issues and remedies for this pathway.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be sent by August 31, 2004 to Katie Robertson at the address listed above.

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

THE NEXT STEP: DEQ will consider all public comments received before issuing a record of decision for the site.

PROPOSED NO FURTHER ACTION DECISION PORTLAND HOSPITAL SERVICE CENTER SITE UPLAND 4.75-ACRE PARCEL OF SPADA SOUTH RIVERSIDE CORPORATE CENTER DEVELOPMENT NE 185TH AVENUE AND RIVERSIDE PARKWAY PORTLAND, OREGON

COMMENT PERIOD: August 1, 2004 to August 31, 2004

COMMENTS DUE: August 31, 2004

PROPOSAL: DEQ proposes issuing a no further action decision for the Uplands portion of the Portland Hospital Service Center site (a parcel of the Spada South site). An environmental investigation and cleanup of the historic irrigation ditches that border the site is being performed by Portland Development Commission under a voluntary agreement with DEQ, and is not subject to this proposal.

HIGHLIGHTS: The Department of Environmental Quality (DEQ) has completed its environmental evaluation of the Uplands portion

OTHER NOTICES

of the Portland Hospital Service Center site. Historical agricultural practices at the site included the use of pesticides. Site development was completed in 2003 consistent with the current industrial zoning. It includes a 65,000 square foot structure, a paved parking lot, and landscaping. A permitted stormwater system controls runoff.

Environmental testing performed at the site identified pesticide chemicals in soil beneath pavement and landscaping. A risk assessment was conducted to evaluate potential human health and ecological risks posed by the pesticides in soil. The findings of the risk assessment indicate the residual pesticide contamination does not pose an unacceptable risk to human health, and that potential ecological risks will be controlled by buildings, pavement, and landscaping covering the residual contamination.

HOW TO COMMENT: The project file is available for public review. To schedule an appointment call (503) 229-6729. The DEQ project manager is Anna Coates, (503) 229-5213. Written comments should be sent to Anna Coates, DEQ, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by August 31, 2004. A public meeting will be held to receive comments if requested by 10 or more persons or by a group with a membership of 10 or more.

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

PROPOSED NO FURTHER ACTION AND REMOVAL OF THE SITE FROM THE CONFIRMED RELEASE LIST AND INVENTORY OF HAZARDOUS SUBSTANCE SITES, FORMER SP ANODIZING SITE PORTLAND, OREGON

COMMENTS DUE: September 2, 2004

PROJECT LOCATION: 7415 SE Johnson Creek Boulevard, Portland, Oregon

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) proposes a No Further Action (NFA) determination and delisting of the former SP Anodizing site from the Confirmed Release List (CRL) and Inventory of Hazardous Substance Sites (Inventory).

HIGHLIGHTS: The former SP Anodizing site covers 20,000 square feet along the southern bank of Johnson Creek. SP Anodizing conducted aluminum anodizing operations from 1976 to 1984. The treatment processes at the facility included an anodizing line with alu-

minum treatment, sulfuric acid, and organic dyes. Process effluent was treated and discharged to a dry well. The dry well occasionally overflowed, resulting in direct runoff to Johnson Creek. A storm water catch basin at the site collected runoff from local industrial properties and also was identified as a contaminant source to Johnson Creek.

A Site Inspection sampling investigation conducted by EPA in 1991 showed elevated levels of several metals and low levels of polychlorinated biphenyls and pesticides. In 1996 the property was placed on DEQ's Confirmed Release List and Inventory of Hazardous Substance Sites due to elevated levels of a number of metals in soil.

Sure Power, Inc., the property owner, entered DEQ's Voluntary Cleanup Program on October 1, 2001 to conduct an Expanded Preliminary Assessment (XPA). Based on the findings of the XPA, Sure Power conducted an independent remedial action to address contamination found in several areas of the site. The cleanup actions included a sediment removal near the storm water outfall, petroleum-contaminated soil removal near a compressor blow down area, storm water catch basin cleaning, removal of the drywell and surrounding soil, and asphalt resurfacing to reduce soil runoff. Based on the results of a risk assessment completed by Sure Power after the cleanup actions, DEQ has determined that contamination attributable to the site has been cleaned up to protective levels, or within the range of ambient concentrations in Johnson Creek. Because site-related contamination at the site does not present a significant risk to human health or the environment, DEQ is proposing to issue a No Further Action (NFA) determination for the site, and to remove the site from the CRL and Inventory.

HOW TO COMMENT: The staff memorandum and other files will be available for public review beginning Monday, August 2, 2004. To schedule an appointment to review the site files call Dawn Weinberger at (503) 229-6729. The DEQ project manager is Mark Pugh (503) 229-5587. Written comments concerning DEQ's proposed decision should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Ave., Suite 400, Portland, OR 97201, or via e-mail to Pugh.Mark@deq.state.or.us, by Thursday, September 2, 2004. A public meeting will be held to receive verbal comments if requested by 10 or more people or by a group with a membership of 10 or more.

THE NEXT STEP: DEQ will consider all public comments and DEQ's Northwest Region Cleanup Manager will make and publish the final decision after consideration of these comments.

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.

.....
Board of Medical Examiners
Chapter 847

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.825
Proposed Amendments: 847-080-0017
Last Date for Comment: 8-30-04

Summary: The proposed rules require an applicant to request an official grade certification of the National Board of Podiatric Medical Examiners' (NBPME) Examination Part III be submitted directly to the Board from the Federation of Podiatric Medical Boards.

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

.....
Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.265(1)
Proposed Amendments: 847-070-0033
Last Date for Comment: 8-30-04

Summary: The proposed administrative rules allow visiting acupuncturists to demonstrate needling at seminars, workshops and conferences sponsored by a school or program within a school of acupuncture or oriental medicine or Board approved professional acupuncture organizations, with an Oregon licensed acupuncturist in attendance.

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

.....
Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 192.518 & 192.519
Proposed Amendments: 847-012-0000
Last Date for Comment: 8-30-04

Summary: The proposed administrative rules specify that a request for medical records shall be complied with within a reasonable period of time not to exceed thirty (30) days from the receipt of the request.

Rules Coordinator: Diana M. Dolstra

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

.....
Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.415
Proposed Amendments: 847-010-0073
Last Date for Comment: 8-30-04

Summary: The proposed administrative rules change sets forth what shall be included in a report from a healthcare facility or licensee required to report to the Board any official action, incident or event taken against or involving a Board licensee, based on a finding of medical incompetence, unprofessional conduct, or licensee impairment, within ten working days of their occurrence.

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

.....
Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.265
Proposed Amendments: 847-005-0005
Last Date for Comment: 8-30-04

Summary: The proposed administrative rules adjust selected fees for initial applications, licensee registrations, and limited licenses, effective September 10, 2004 through September 9, 2006.

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

.....
Board of Nursing
Chapter 851

Date:	Time:	Location:
9-16-04	9 a.m.	800 NE Oregon St. Portland State Office Bldg. Rm. 120-C Portland, OR 97232

Hearing Officer: Marguerite Gutierrez, Board President

Stat. Auth.: ORS 678.385
Stats. Implemented: ORS 678.375 & 678.385
Proposed Amendments: 851-050-0131
Last Date for Comment: 9-14-04, 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 June, July, August and September 2004 updates to Drugs 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:	Time:	Location:
9-16-04	9 a.m.	800 NE Oregon St. Portland State Office Bldg. Rm. 120-C Portland, OR 97232

Hearing Officer: Marguerite Gutierrez, Board President

Stat. Auth.: ORS 678.150 & 678.410
Stats. Implemented: ORS 678.410
Proposed Amendments: 851-002-0040, 851-002-0050

NOTICES OF PROPOSED RULEMAKING

Last Date for Comment: 9-14-04, 5 p.m.

Summary: These rules cover the Nursing Assistant Schedule of Fees. The first CNA 2 curriculum was accepted by the Board of Nursing at its June 2004 Board meeting. When the first of these CNA2's complete their course, they will be registered in our database. These proposed fees are to cover the registration process. In addition, a few housekeeping changes have been made.

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

Rules Coordinator: KC Cotton

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

Telephone: (503) 731-4754

Date: 9-16-04	Time: 9 a.m.	Location: 800 NE Oregon St. Rm. 120-C Portland, OR 97232
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Hearing Officer: Marguerite Gutierrez, Board President

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150

Proposed Amendments: 851-001-0005

Last Date for Comment: 9-14-04, 5 p.m.

Summary: These rules cover practice and procedure for the Oregon State Board of Nursing. In these rules, reference is made to "The Model Rules of Procedure of the Attorney General under the Administrative Procedures Act." They state that these Model Rules are in effect on October 3, 2001, and all amendments thereto are hereby adopted by reference as the rules of the State Board of Nursing. This proposed amendment is simply housekeeping in nature in that it updates the rules with the latest version of the Model Rules of Procedures of the Attorney General dated January 15, 2004.

**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 Psychologist Examiners Chapter 858

Date: 8-23-04	Time: 9 a.m.	Location: 3218 Pringle Rd. SE 1st Floor Conf. Rm. Salem, OR
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Hearing Officer: Martin Pittioni

Stat. Auth.: ORS 675.010 - 675.150; Other Auth.: ORS 675.010 - 675.150 & EO 01-03

Stats. Implemented:

Proposed Adoptions: 858-010-0002

Proposed Amendments: 858-010-0001, 858-010-0005, 858-010-0007, 858-010-0015, 858-010-0020, 858-010-0030, 858-010-0041, 858-010-0050, 858-010-0055, 858-010-0065, 858-010-0075, 858-020-0015, 858-020-0045, 858-020-0055, 858-020-0085, 858-030-0005, 858-040-0015, 858-040-0095, 858-050-0105, 858-050-0125

Last Date for Comment: 8-23-04

Summary: Further defines practice of psychology definitions by including supervision of testing technicians. Establishes guidelines for supervision of testing technicians, implementing SB155 (2003). Prepares for biennial licensure renewal beginning January 2006, as authorized by SB155 (2003). Implements Board authority to grant hardship exemptions with respect to fee renewal, delinquency fees, and continuing education requirements and deadlines. Allows the Board more flexibility in the content areas of oral exam Domain I (Psychological Principles and Techniques). Updates complaint reporting and investigation rules. Eliminates Oregon Code of Conduct for Psychologists and updates Code of Professional Conduct to adopt the American Psychological Association (APA)'s "Ethical

Principles of Psychologists and Code of Conduct" (2002), and the APA's "Standards for Educational and Psychological Tests" (1999). Implements professional mobility options authorized by SB154 (2003). Allows issuance of limited permits to practice to out-of-state applicants under certain conditions. Eliminates language allowing non-psychologist supervisors for psychologist associates. Various housekeeping changes.

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

Rules Coordinator: Martin Pittioni

Address: Board of Psychologist Examiners, 3218 Pringle Rd. SE - Suite 130, Salem, OR 97302

Telephone: (503) 378-4154, ext. 21

Construction Contractors Board Chapter 812

Date: 8-24-04	Time: 11 a.m.	Location: West Salem Roth's IGA
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Hearing Officer: Jim Fairchild

Stat. Auth.: ORS 87.093, 293.445, 670.310, 701.055 & 701.235

Stats. Implemented: ORS 87.093, 183.310, 183.500, 192.430, 701.055, 701.235, 701.250, 701.252 & 701.280

Proposed Amendments: 812-001-0015, 812-001-0020, 812-006-0050

Last Date for Comment: 8-24-04, 11 a.m.

Summary: • OAR 812-001-0015 is amended to include the category "Licensed Developer" to the list of categories of license.

• OAR 812-001-0020(1) is amended to remove the automated 24-hour inquiry line phone number from the form, as the phone number is no longer in service. OAR 812-001-0020(2) is amended to correct the phone number to obtain information regarding federal employer identification (EIN) numbers.

• OAR 812-006-0050 is amended to replace the name "Training Board" with "Training and Education Committee" and to eliminate the specific time set for each subject area of the 16-hour education course since the implementation of the test, the specified times are no longer necessary.

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

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 Administrative Services Chapter 125

Stat. Auth.: ORS 276.227 & 276.028

Stats. Implemented:

Proposed Adoptions: 125-125-0050, 125-125-0100, 125-125-0150, 125-125-0200, 125-125-0250, 125-125-0300, 125-125-0350, 125-125-0400, 125-125-0450

Last Date for Comment: 8-21-04

Summary: Establish a procedure for statewide facilities reporting and incorporate the functions of the Capitol Planning Commission into the Capital Projects Advisory Board structure while the CPC rules are suspended through 6/05.

Rules Coordinator: Kristin Keith

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

Telephone: (503) 378-2349, ext. 325

Department of Agriculture Chapter 603

Date: 9-9-04	Time: 10 a.m.	Location: OR Dept. of Agriculture Conference Rm. D Salem, OR
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NOTICES OF PROPOSED RULEMAKING

Hearing Officer: Chris Kirby

Stat. Auth.: ORS 561.190, 183.310 & 632.811

Stats. Implemented:

Proposed Amendments: 603-022-0005, 603-022-0101, 603-022-0310, 603-022-0325, 603-022-0330, 603-022-0340, 603-022-0345, 603-022-0500

Proposed Repeals: 603-022-0315, 603-022-0505, 603-022-0510, 603-022-0515, 603-022-0520, 603-022-0525, 603-022-0530, 603-022-0535, 603-022-0540, 603-022-0545, 603-022-0600, 603-022-0605, 603-022-0610, 603-022-0615, 603-022-0620, 603-022-0625, 603-022-0630, 603-022-0635, 603-022-0640, 603-022-0645, 603-022-0650, 603-022-0655, 603-022-0660, 603-022-0665, 603-022-0670, 603-022-0675, 603-022-0680, 603-022-0685, 603-022-0690, 603-022-0695, 603-022-0700, 603-022-0705, 603-022-0710, 603-022-0800, 603-022-0805, 603-022-0810, 603-022-0815, 603-022-0820, 603-022-0825, 603-022-0830, 603-022-0835, 603-022-0840, 603-022-0845, 603-022-0850, 603-022-0855, 603-022-0860, 603-022-0865, 603-022-0870, 603-022-0875, 603-022-0880, 603-022-0885, 603-022-0890, 603-022-0895

Last Date for Comment: 9-10-04

Summary: OAR Chapter 603, Division 22, applies to eggs and egg products. The proposed amendments would adopt the newest version of the Code of Federal Regulations governing egg and egg products, correct errors in referencing OAR's, clarify language on grading shell eggs, consolidate definitions, allow the use of USDA plant numbers in place of Oregon Egg Seals and repeal language dealing with the requirement for plant facilities and establishments.

**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 97301-2532

Telephone: (503) 986-4583

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Department of Agriculture, Oregon Bartlett Pear Commission Chapter 606

Date:	Time:	Location:
8-24-04	11 a.m.	4382 SE International Way Suite A Milwaukie, OR 97222-4635

Hearing Officer: Linda Bailey

Stat. Auth.: ORS 576.327 & 576.304

Stats. Implemented: ORS 576.327

Proposed Adoptions: 606-040-0010

Last Date for Comment: 8-24-04, close of hearing

Summary: The Oregon Bartlett industry pays assessments to two organizations. A state commission (Oregon Bartlett Pear Commission) and the Northwest Fresh Bartlett Marketing Committee (established by a federal marketing order). The USDA has proposed rules that would allow 100% organic organizations to be exempt from the portion of the assessment for marketing promotion and paid advertising. To keep consistency within the pear industry, the Oregon Bartlett Pear Commission is proposing similar rules that would allow for the same type of exemption. Specifically this would relate to the \$5.00 a ton paid for processing pear promotion, currently contracted through the Pacific Northwest Canned Pear Service. The 100% organic organizations that qualify for and apply for an exemption would pay \$.50 per ton on processed pears instead of the full processing pear assessment of \$5.50.

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

Rules Coordinator: Linda Bailey

Address: Department of Agriculture, Bartlett Pear Commission, 4382 SE International Way - Suite A, Milwaukie, OR 97222-4635

Telephone: (503) 652-9720

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

Date:	Time:	Location:
8-17-04	10 a.m.	1535 NW Edgewater St. Salem, OR 97309

Hearing Officer: Richard Rogers

Stat. Auth.: ORS 455.020, 455.030, 455.110 & 455.112

Stats. Implemented: ORS 455.020, 455.110 & 455.112

Proposed Amendments: 918-460-0015

Last Date for Comment: 8-20-04, 5 p.m.

Summary: This rule removes a specific code exemption for a particular class of glazing known as "polished wired glass" from compliance standards for safety glass in fire rated assemblies (glass typically found in corridor doors and side windows) installed in all buildings. Oregon's current structure code exempts wired glass from having to comply with these impact ratings for all but educational occupancies (kindergarten through twelfth grade). The proposed rule will amend the structure code to prohibit the installation of wired glass in areas where there is a high potential for human impact (known as hazardous locations, as defined in the state building code) unless the glass meets the same impact ratings as comparable safety glazing products.

**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) 378-4472

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Stat. Auth.: ORS 479.870

Stats. Implemented: ORS 479.870

Proposed Repeals: 918-320-0315

Last Date for Comment: 8-30-04, 5 p.m.

Summary: This is a housekeeping rulemaking activity intended to eliminate a duplicative rule. OAR 918-320-0315 was mislabeled and originally was to be renumbered during a three-year rule review in 1996. The Archives Division of the Secretary of the State's Office notified the division that this rule was still in effect because there is no official record amending, renumbering or repealing it. This rule is now in conflict with the OAR 918-311-0030, which is the current rule for qualifications for persons performing electrical reviews. The appropriate course of action is to repeal 918-320-0315 to remove conflicts in the rules regarding qualifications for persons performing electrical reviews.

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

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Stat. Auth.: ORS 455.020, 455.030, 455.110, 455.380, 455.525 & 455.610

Stats. Implemented: ORS 455.610

Proposed Amendments: 918-480-0005, 918-480-0010, 918-480-0020

Last Date for Comment: 8-30-04, 5 p.m.

Summary: This rulemaking activity is intended to address concerns regarding an administrative error in the original filing of these rules. This rulemaking will be filed retroactive to avoid any gaps in the application of the rules. There is no departure from the original language as it was filed and effective April 1, 2003.

The original rulemaking activity adopted the 2000 International Residential Code for One- and Two-Family Dwellings with Oregon amendments. This updated the One- and Two-Family Dwelling Specialty Code to reflect national changes to the model code. This update allowed the use of modern materials and techniques consistent with updated national standards and practices.

NOTICES OF PROPOSED RULEMAKING

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, Oregon Occupational Safety and Health Division Chapter 437

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Proposed Amendments: 437-002-0100, 437-002-0240, 437-002-0300
Last Date for Comment: 8-27-04

Summary: Federal OSHA published, in the June 8, 2004 Federal Register, error corrections (typographical and reference) to four standards. Oregon OSHA's standards must be at least as effective as federal OSHA, therefore, we are proposing to adopt the corrections.

The first correction deletes two references to a nonexistent table in the Mechanical Power-Transmission Apparatus Standard. The second is a correction of typographical errors in the Mechanical Power Presses Standard. The third correction is to a cross-reference in the Telecommunications Standard. The fourth correction is to a reference to a table contained in the Hazardous Materials Standard for Hydrogen.

These changes are in Oregon OSHA's Divisions 2/H, 2/O, and 2/R.

Please visit OR-OSHA's web site: www.orosha.org

Rules Coordinator: Sue C. Joye
Address: Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE, Salem, OR 97301-3882
Telephone: (503) 947-7449

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

Date:	Time:	Location:
8-23-04	10 a.m.	350 Winter St. NE Labor & Industries Bldg. Rm. 260 (2nd floor) Salem, OR

Hearing Officer: Fred Bruyns
Stat. Auth.: ORS 656.726(4), 656.704 & 656.268; Other Auth.: ORS 183.335, OAR 137-001 & OAR 436-001

Stats. Implemented: ORS 656 & ch. 657, OL 2003 (Senate Bill 757)

Proposed Adoptions: 436-035-0008, 436-035-0009, 436-035-0011, 436-035-0012, 436-035-0013, 436-035-0014, 436-035-0015, 436-035-0016, 436-035-0017, 436-035-0018, 436-035-0019, 436-035-0115, 436-035-0235, 436-035-0255, 436-035-0265

Proposed Amendments: Rules in 436-030, 436-035
Proposed Repeals: 436-035-0010, 436-035-0170, 436-035-0200, 436-035-0270, 436-035-0280, 436-035-0290, 436-035-0300, 436-035-0310, 436-035-0320

Last Date for Comment: 8-27-04
Summary: The agency proposes to amend these rules primarily to implement changes in the law due to legislation passed by the 2003 Oregon Legislature. Senate Bill 757 changed the disability rating standards for claims with dates of injury on or after January 1, 2005. In accordance with the changes, these proposed rules (for dates of injury on or after 1/1/2005):

- Eliminate the distinction between scheduled and unscheduled permanent partial disability awards;
- Provide that all impairment is expressed as a percentage of loss of the whole person, not to exceed 100%; impairment benefits are determined by multiplying the impairment value times 100 times the Oregon average weekly wage; and

- Provide "work disability" for workers who have permanent impairment and who have not returned to or been released for regular work; work disability benefits are determined by multiplying the impairment value, as modified by the factors of age, education, and adaptability to perform a given job, times 150 times the worker's weekly wage for the job at injury, though the factor used for the weekly wage may not be more than 133% nor less than 50% of Oregon's average weekly wage.

In addition, these proposed rules:

- 436-030-0105 Establish a uniform process for the director's review of claim classification (disabling/nondisabling) decisions;
- 436-030-0155 Require that for cases involving a care provider who must meet criteria other than those of an attending physician or who practices under contract with a managed care organization, the insurer must provide documentation of the care provider's authority to act as an attending physician.
- 436-035-0007 Establish uniform standards for the determination of chronic condition impairment (existing rules provide different criteria for scheduled and unscheduled body parts);
- 436-035-0012 For dates of injury on or after January 1, 2005, provide that the worker's adaptability is determined by comparing the adaptability scale and the residual functional capacity scale and using the higher of the two values for adaptability.
- 436-035-0110 Establish standards for determination of permanent impairment due to neurological dysfunction resulting in cold intolerance in the upper extremity (upon reconsideration of a Notice of Closure, this scenario currently requires temporary rule promulgation under ORS 656.726(4)(f)(C));
- 436-035-0110 Prescribe a method for determining sensation impairment in a digit in which the sensation loss does not extend to the distal end of the digit; the value is established by determining the value for loss from the distal end of the digit to the proximal location of the loss, and subtracting the value for loss from the distal end of the digit to the distal location of the loss (upon reconsideration of a Notice of Closure, this scenario currently requires temporary rule promulgation under ORS 656.726(4)(f)(C)); and
- 436-035-0250 Extend the presbycusis tables beyond the age of 60 to "85 or older" and provide that the hearing impairment threshold of 150 decibels is to be subtracted from the presbycusis value.
- 436-035-0390 Supplement the brain injury class descriptions with information intended to assist physicians and disability analysts in determining the relevant class and therefore the appropriate percentage of impairment.

Address questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail 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 Environmental Quality Chapter 340

Date:	Time:	Location:
8-24-04	4 p.m. Info Briefing 5 p.m. Hearing	750 Front St. NE DEQ, Ste. 120 Salem, OR 97301
8-25-04	10 a.m. Info Briefing 11 a.m. Hearing	811 SW 6th Ave. DEQ, Rm. 3 A/B Portland, OR 97204

Hearing Officer: Anne Price or Jane Hickman

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 459.376(1), 459.995, 468.020(1), 468.035(1)(i), 468.045(1)(c), 465.900, 466.210, 466.990, 466.992, 466.994 & 783.992

Stats. Implemented: ORS 454.635 - 454.645, 459.376, 459.995, 465.900, 466.210, 466.990 - 466.994, 468.090 - 468.140, 468.996, 468B.025, 468B.220, 468B.450 & 783.992

Proposed Adoptions: 340-012-0053, 340-012-0079, 340-012-0097, 340-012-0130, 340-012-0145, 340-012-0150, 340-012-0160, 340-012-0162

Proposed Amendments: 340-012-0026, 340-012-0030, 340-012-0041, 340-012-0045, 340-012-0050, 340-012-0055, 340-012-0060, 340-012-0065, 340-012-0066, 340-012-0067, 340-012-0068, 340-012-0071, 340-012-0072, 340-012-0073, 340-012-0081, 340-012-0082, 340-012-0083, 340-150-0250, 340-200-0040

Proposed Repeals: 340-012-0028, 340-012-0035, 340-012-0046, 340-012-0052

Proposed Ren. & Amends: 340-012-0040 to 340-012-0038, 340-012-0050 to 340-012-0054, 340-012-0090 to 340-012-0135, 340-012-0042 to 340-012-0140, 340-012-0049 to 340-012-0155, 340-012-0048 to 340-012-0165, 340-012-0047 to 340-012-0170

Last Date for Comment: 8-31-04, 5 p.m.

Summary: The goal of this rulemaking is to develop and implement an effective compliance and enforcement program that is understandable, encourages compliance, is equitable, and appropriately reflects the severity of the violation. The Department originally proposed revisions to these enforcement rules in January 2004. In light of comments from the public regarding the proposed amendments to the violation classifications and selected magnitudes, the Department is delaying proposed amendments to those sections pending further review and consideration. With the current proposal, the Department is amending and resubmitting the rulemaking package. This rulemaking package includes many of the proposed amendments from the January 2004 proposed rulemaking, with the exception of the proposed amendments to the selected magnitudes and many of the violation classifications. The Department expects to propose amendments to those sections in late 2005, after further dialogue with stakeholders.

The proposed rules apply to individuals, businesses, and federal, state and local government agencies against whom the Department enforces its rules and enabling statutes. These proposed rules do not create any new duties for the regulated community but, due to proposed changes in base penalties and matrix assignments, penalty amounts for a given violation may increase or decrease if a given violation is referred for formal enforcement. The main changes proposed for Division 12 in this rulemaking include:

- Clarifying the differences between informal and formal enforcement processes.
- Listing more sub-program violations separately rather than combining them, to improve ease of use.
- Modifying the penalty matrices, including increasing the values of the \$10,000 penalty matrix, adding a new intermediate penalty matrix to start at \$6,000, increasing the values for the \$2,500 matrix, decreasing the values for the \$1,000 matrix and eliminating the \$500 penalty matrix. The matrices have also been modified so that small business and other smaller permitted sources, in most cases, fall into a lower penalty matrix.
- Modifying the notice of noncompliance process to allow for a two-tiered notification (e.g., Warning Letters and Pre-Enforcement Notices).
- Amending a rule from the tanks program (OAR 340-150-0250) regarding the expedited enforcement process to provide that all Class II violations related to underground storage tanks (UST) are assigned a field penalty amount of \$50 rather than assigning some violations a penalty of \$75. The proposed amendment would also allow some Class I UST violations to be handled via the expedited enforcement process.

These amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan, which is a requirement of the Clean Air Act.

To submit comments, request a copy of the proposed rules or request additional information, please contact Jane Hickman at the Department of Environmental Quality, Office of Compliance and Enforcement, 811 S.W. 6th Avenue, Portland, OR 97204, phone toll free in Oregon at 1 (800) 452-4011, ext. 5555 or local (503) 229-5555, email hickman.jane@deq.state.or.us; or fax (503) 229-6762. The proposed rules may also be viewed online at <http://www.deq.state.or.us/programs/enforcement/index.htm>.

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

Rules Coordinator: Roberta Young

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

Telephone: (503) 229-6408

Department of Fish and Wildlife Chapter 635

Date:	Time:	Location:
9-10-04	8 a.m.	ODFW Commission Rm. 3406 Cherry Avenue NE Salem, OR 97303

Hearing Officer: Fish and Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Proposed Adoptions: Rules in 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039

Proposed Amendments: Rules in 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039

Proposed Repeals: Rules in 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039

Last Date for Comment: 9-10-04

Summary: These rules amend regulations governing sport fishing for finfish, shellfish and marine invertebrates for 2005. 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

Date:	Time:	Location:
9-10-04	8 a.m.	ODFW Commission Rm. 3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish and Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146, 496.162, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.162 & 506.129

Proposed Adoptions: Rules in 635-004, 635-006, 635-011, 635-039

Proposed Amendments: Rules in 635-004, 635-006, 635-011, 635-039

Proposed Repeals: Rules in 635-004, 635-006, 635-011, 635-039

Last Date for Comment: 9-10-04

Summary: Adopt the 2005 and 2006 groundfish recreational and commercial fishery regulations and adopt rules consistent with actions taken by the Pacific Fishery Management Council at its June 2004 meeting. 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

NOTICES OF PROPOSED RULEMAKING

Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303
Telephone: (503) 947-6033

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

Date: 8-23-04 **Time:** 10 a.m. **Location:** 500 Summer St. NE
Rm. 254
Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.005, 418.015 & 419B.005 - 419B.050
Proposed Adoptions: 413-015-0511, 413-015-0512, 413-015-0513, 413-015-0514
Proposed Amendments: 413-015-0100 - 413-015-0125, 413-015-0200 - 413-015-0225, 413-015-0300 - 413-015-0310, 413-015-0400 - 413-015-0410, 413-015-0500 - 413-015-0510
Last Date for Comment: 8-31-04

Summary: These Child Protective Service rules are being changed simultaneous to and in conjunction with the implementation of the revised version of the Guided Assessment Process (GAP). One of these changes is a documentation change as a result of increased system flexibility. Another change includes deleting references to a time line for CPS response that is no longer to be used. The primary change, however, is the creation of specific procedures for completing safety assessments and safety plans, reviewing safety plans, responding to a new safety threat and using Team Decision Meetings. The purpose is to increase consistency in the methods used to assess child safety in different offices across the state.

These rules also include changes made in order to clarify the intent of existing CPS rules and guide best practice that were amended in a June 15, 2004 Notice of Proposed Rulemaking. 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, 500 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**

Date: 8-17-04 **Time:** 10:30 a.m.-12 p.m. **Location:** 500 Summer St. NE
Rm. 137 D
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-138-0020, 410-138-0040, 410-138-0060, 410-138-0320, 410-138-0340, 410-138-0520, 410-138-0540
Last Date for Comment: 8-17-04, 12 p.m.
Summary: The Targeted Case Management Services program rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. Rules listed above will be amended to create a contractual relationship between providers and OMAP, by use of rules, and by using the Provider Enrollment Application as the authorizing document. This will eliminate the need for multiple contracts. Other changes will clarify the differences between the various targeted case management programs and will update the codes used for billing.

**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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Date: 8-17-04 **Time:** 10:30 a.m.-12 p.m. **Location:** 500 Summer St. NE
Rm. 137 D
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-141-0480, 410-141-0520
Last Date for Comment: 8-17-04, 12 p.m.

Summary: The OHP administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. Rules 410-141-0480 and 410-141-0520 will be amended to clarify that Medical Assistance benefit packages follow practice guidelines adopted by the Health Services Commission in conjunction with the Prioritized List of Health Services, unless specified otherwise in rule.

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

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

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Date: 8-30-04 **Time:** 9 a.m. **Location:** 500 Summer St. NE
DHS, Rm. 137A
Salem, OR

Hearing Officer: Gary Williams
Stat. Auth.: ORS 409.010
Stats. Implemented: ORS 414.065
Proposed Adoptions: 410-133-0245
Proposed Amendments: 410-133-0000, 410-133-0040, 410-133-0060, 410-133-0080, 410-133-0090, 410-133-0100, 410-133-0120, 410-133-0140, 410-133-0160, 410-133-0180, 410-133-0200, 410-133-0220, 410-133-0280, 410-133-0300, 410-133-0320, 410-133-0340
Last Date for Comment: 8-30-04, 5 p.m.

Summary: Rules relate to the requirements and operations for conducting school-based health services.

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

Rules Coordinator: Pat Bougher
Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E22, Salem, OR 97301-1099
Telephone: (503) 945-5844

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**Department of Human Services,
Public Health
Chapter 333**

Date: 8-20-04 **Time:** 9:30 a.m. **Location:** 800 NE Oregon St.
Suite 120B
Portland, OR 97232

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 433.100; Other Auth.: HB 2244 (2003 Legislative Session)
Stats. Implemented: ORS 433.100
Proposed Adoptions: 333-049-0065
Last Date for Comment: 8-20-04, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: Establishes fees for disclosure of information contained in Oregon Immunization ALERT used for quality improvement projects for privately insured patients. Fees will apply to health plans, health provider associations, private or non-profit institutions, other state registries and/or federal health agencies or their contractors. Fees will not apply to individual health care providers and clinics, Oregon schools, Oregon hospitals or the Oregon Department of Human Services, Office of Medical Assistance Programs (OMAP). Fees will not be assessed against entities making voluntary contributions in accordance with an established formula to help support the operation of Oregon Immunization ALERT.

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

Date:	Time:	Location:
8-24-04	10 a.m.	500 Summer St. NE Rm. 254 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 93.268, 205.246, 409.050, 410.070, 411.060, 411.070, 411.692, 411.700, 411.710, 411.816, 414.042, 414.047, 414.342 & 418.100; Other Auth.: Food and Nutrition Service (FNS) Administrative Notice 03-33 and Approval of Full Utility Allowance (FUA) and Limited Utility Allowance (LUA), Letter from FNS dated June 3, 2004, ORS 93.268 & 411.694, Food Stamp State Plan that is submitted to FNS for approval August 15 of each year, Farm Security and Rural Investment Act of 2002, section 4104, CFR 273.9, 7 CFR 273.9 (d)(6)(iii) & 7 CFR 273.10 (e)(2)(ii)(C)

Stats. Implemented: ORS 93.268, 113.145, 114.525, 128.266, 205.246, 411.060, 411.070, 411.095, 411.117, 411.122, 411.692, 411.700, 411.710, 411.816, 411.825, 414.042, 414.047, 414.342 & 418.100

Proposed Amendments: 461-025-0310, 461-025-0315, 461-101-0010, 461-110-0370, 461-110-0410, 461-110-0610, 461-115-0030, 461-115-0050, 461-115-0190, 461-115-0705, 461-120-0510, 461-125-0370, 461-125-0510, 461-135-0301, 461-135-0405, 461-135-0834, 461-135-0847, 461-135-0875, 461-135-0990, 461-135-1070, 461-135-1120, 461-140-0210, 461-140-0296, 461-145-0001, 461-145-0410, 461-145-0420, 461-145-0540, 461-155-0190, 461-155-0225, 461-155-0360, 461-155-0630, 461-155-0660, 461-160-0015, 461-160-0030, 461-160-0055, 461-160-0420, 461-160-0430, 461-160-0540, 461-160-0580, 461-160-0610, 461-165-0060, 461-165-0100, 461-170-0120, 461-175-0010, 461-175-0030, 461-175-0200, 461-175-0250, 461-180-0065, 461-180-0070, 461-190-0211, 461-190-0241, 461-195-0511

Proposed Repeals: 461-125-0330, 461-135-0720, 461-135-0721, 461-155-0110, 461-160-0080, 461-175-0330, 461-190-0221

Last Date for Comment: 8-24-04

Summary: Rule 461-025-0310 is being amended to state that clients have a right to a hearing when a JOBS support service payment, pursuant to OAR 461-190-0211, is denied, reduced or closed.

Rule 461-025-0315 is being amended because The Department is adding language to this rule to specify that clients may receive an expedited hearing when a JOBS support service payment is denied, reduced or closed.

Rules 461-101-0010, 461-110-0410, 461-110-0610, 461-120-0510, 461-135-0875, 461-135-0990, 461-145-0540, 461-155-0360, 461-160-0030, 461-160-0055, 461-160-0540, 461-160-0610, 461-165-0100, 461-170-0120, and 461-180-0065 are being amended and rules 461-135-0720, 461-135-0721, 461-155-0110, 461-160-0080 and 461-175-0330 are being repealed to remove all reference to the

Oregon Supplemental Income Program Medical – Medically Needy (OSIPM-MN) program, because the program ended January 31, 2003.

Rules 461-110-0370, 461-155-0190 and 461-160-0430 are being amended to reflect the annual increase in the standards for the Food Stamp program as published by the Food and Nutrition Service.

Rule 461-110-0410 is also being amended to clarify who is in an OSIPM filing group when children are applying.

Rule 461-115-0030 is being amended to add policy that in order to receive JOBS support service payments, clients must complete the Department's JOBS support service payment application process.

Rule 461-115-0050 is being amended to clarify that clients may change between certain medical programs without a new application.

Rule 461-115-0190 is being amended to clarify what exceptions are permitted for extending the time standards for medicaid determinations based on disability made by the state beyond 90 days from the date of application. Adopts language regarding timely determinations for Medicaid from section 435.911 of 42 CFR.

Rule 461-115-0190 is also being amended to add application processing time frames for JOBS support service payments per rule 461-190-0211.

Rule 461-115-0705 is being amended to clarify that workers are to accept the client's statement when income verification is not available for determining OHP eligibility.

Rule 461-125-0330 is being repealed because individuals who meet the eligibility requirements for Medicaid based on blindness are included in rule 461-125-0370. A reference to those who were eligible for and received Aid to the Blind in Oregon in December 1973 is being added to rule 461-125-0370. These grand fathered cases continue to be eligible for Medicaid as long as they are continuously blind as defined by Oregon requirements that were in effect in 1973.

Rule 461-125-0370 is being amended to add language that was removed when rule 461-125-0330 was repealed. This stipulates clients who were eligible for and received Aid to the Blind in Oregon in 1973 may receive Medicaid. These grand fathered cases continue to be eligible as long as they are continuously blind as defined by Oregon requirements that were in effect in 1973. This rule also needs to be amended to be in compliance with Section 3272.2 of the State Medicaid Manual which allows a claimant who is receiving Medicaid based on a disabling condition to continue receiving Medicaid provided the claimant has an active SSA administrative appeal of the denial.

Rule 461-125-0510 is being amended so clients with severe mental impairments are evaluated in the same manner as those with severe physical limitations with respect to the vocational rules used to determine eligibility for the General Assistance (GA) program.

Rule 461-135-0301 is being amended to close the Emergency Assistance (EA) program effective May 1, 2004. There will be no EA payments made after April 30, 2004.

Rule 461-135-0405 is being amended to change the duration of protected ERDC eligibility for a child in a Head Start contracted slot.

Rule 461-135-0834 is being amended to include a reference to ORS 93.268, which became effective January 1, 2004.

Rule 461-135-0847 is being amended to remove a reference to "chapter 638, Oregon Laws 2003" and replacing it with a reference to "ORS 411.694."

Rule 461-135-1070 is being amended to clarify that a client whose CAWEM eligibility is based on the OHP-OPU program is subject to OAR 461-135-1102, which closes the OHP-OPU program to new applicants on July 1, 2004.

Rule 461-135-1120 is being amended to provide that a client may request a modification to the Oregon Health Plan (OHP) premium requirement based on a disability under Title II of the Americans with Disabilities Act or Section 504 of the Rehabilitation Act.

Rule 461-140-0210 is being amended to require a penalty for a disqualifying transfer of resources when the transfer occurs not only prior to the date of application but also any time after the look back date, including while the client is a Medicaid recipient.

NOTICES OF PROPOSED RULEMAKING

Rule 461-140-0296 is being amended to add the amount of the divisor for applications filed on or after October 1, 2004, and to specify that \$3,320 is the divisor to use for applications filed any time prior to October 1, 2000.

Rule 461-145-0001 is being amended to count adoption assistance payments as unearned income for the Food Stamp program.

Rule 461-145-0410 is being amended to count special diet or meal allowance as unearned income for the Food Stamp program.

Rule 461-145-0420 is being amended to clarify how to count the proceeds from the sale of real property when the equity value of that real property was temporarily excluded while the property was listed for sale.

Rule 461-155-0225 is amended to clarify the Oregon Health Plan (OHP) \$10,000 gross income standard that is applied when a principal of a business entity is a member of the OHP filing group.

Rule 461-155-0630 is being amended to allow payment of room and board for those who are residing in a residential care facility or assisted living facilities. The room and board payment is prorated from the date of admission through the end of the initial month. The amended rule permits a general fund payment if the recipient has insufficient funds to cover the amount due for the first month of admission.

Rule 461-155-0660 is being amended to limit the definition of who can qualify for a shelter allowance based on their disability. The allowance is based on higher shelter costs associated with their need for special accommodation such as ramps or handrails. The proposed rule will require the individual to demonstrate an identifiable cost in their shelter needs that increases their costs beyond the basic shelter expense allowed in the Medicaid program.

Rule 461-160-0015 is being amended to increase the resource limit from \$5,000 to \$10,000 for children applying for the Children's Health Insurance Program (OHP-CHP) of the Oregon Health Plan.

Rule 461-160-0420 is being amended to reflect the annual change in the Standard Utility Allowances for Food Stamp households. Each year Oregon surveys utility companies and the general public about increases in utility costs. The utility allowances are derived from these surveys and approved by the Food and Nutrition Service in the Food Stamp Program State Plan. Currently there are two utility allowances. The full utility allowance (FUA) is for those households that have heating and cooling costs. The limited utility allowance (LUA) is for those households with non-heating/cooling utility costs. With this amendment, the LUA will be used only when the household has at least two non-heating/cooling costs. A new utility allowance is being created for those households with only one utility non-heating/cooling cost.

Rule 461-160-0580 is being amended for clarification in two areas: that both spouse's resources are considered regardless of whether the couple lives together and that the Department considers available income first prior to allocating additional resources to generate income needed to reach a community spouse's monthly income allowance.

Rule 461-165-0060 is being amended to reflect current federal regulations regarding the amount of food stamp benefits a household of three-persons or greater may receive.

Rules 461-175-0010 and 461-175-0030 are being amended to make minor changes that are not intended to change them substantively. Rule 461-175-0010 is also being amended to explain what information is provided in a mass-change notice.

Rule 461-175-0200 is being amended to make provisions for clients to receive notice when the Department is taking an adverse action against their JOBS support service payments or their request for such payments.

Rule 461-175-0250 is being amended to bring the rule more in line with the concept of mass-change notices required by the federal Food Stamp regulations.

Rule 461-180-0070 is being amended to change policy regarding the effective date for issuing JOBS support service payments. The effective date for issuing a JOBS support service payment is the date

in which a client meets all of the eligibility criteria for such payments as listed in rule 461-190-0211.

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, which was passed by the Oregon Legislature during the 2003 Legislative Session and signed into law by Governor Ted Kulongoski.

Rule 461-190-0241 is being amended to clarify that clients may receive transitional services and benefits if they meet the criteria of OAR 461-190-0211.

Rule 461-195-0511 is being amended to clarify the Department may recover child care overpayments for which the provider is liable from future amounts due. Formerly, the rule appeared to limit the collection only to overpayments caused by provider error or the Department's use of information supplied by the provider.

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

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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

Date:	Time:	Location:
8-20-04	9 a.m.	500 Summer St. Rm. 137 Salem, OR

Hearing Officer: Lynda Dyer

Stat. Auth.: ORS 410, 410.070 & 410.505 - 410.545

Stats. Implemented: ORS 410.030, 410.505 - 540 & 410.890

Proposed Amendments: Rules in 411-071

Last Date for Comment: 8-23-04

Summary: Chapter 411, Division 071, Private Admission Assessment rules are being proposed for permanent amendment effective 09/01/2004. The proposed rule amendments include the following:

A) Removes the ability of a certified program to charge an individual for any portion of an assessment;

B) Revises portions of the certification process to include;

C) Changes the term of a certification from one year, to the life of the contracted period

D) Eliminates the annual renewal process

E) Implements an annual certification fee of \$200

F) Eliminates the previous certification fee structure which was based on the number of assessments completed

G) Establishes a uniform rate for conducting Private Admission Assessments (PAA) of \$140 per, for all types of PAAs. The previous assessment rates of \$125 for an inpatient of a hospital and \$170 for assessments performed on an outpatient basis will be revoked.

The proposed amendment will also bring rule language consistent with new agency names and current practice.

**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

NOTICES OF PROPOSED RULEMAKING

Department of Justice Chapter 137

Date: 8-23-04
Time: 9-11 a.m.
Location: 1241 State St. NE
Robertson II, Conf. Rm. D
Salem, OR 97301

Hearing Officer: Mary Schnabel-Bray

Stat. Auth.: ORS 279A.065, 279B.055(4)(e), 279B.055(4)(f), 279B.055(5)(a), 279B.055(5)(b), 279B.055(7), 279B.060(2)(h)(D), 279B.060(6)(b)(H), 279B.060(6)(d), 279B.065(1), 279B.070(1), 279B.075(1), 279B.135, 279B.400(1), 279B.405(3), 279B.405(6) & 279B.410(3)

Stats. Implemented: ORS 200.035, 200.065, 200.075, 279A.015, 279A.030, 279A.050, 279A.055, 279A.065, 279A.100, 279A.105, 279A.110, 279A.120, 279A.125, 279A.180, 279A.205, 279A.210, 279A.215, 279A.220, 279A.225, 279B.015, 279B.050, 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.080, 279B.085, 279B.100, 279B.110, 279GB.115, 279B.120, 279B.130, 279B.135, 279B.225, 279B.400, 279B.405, 279B.410, 279B.415, 279B.420, 279B.425, 279C.110, 279C.115, 279C.125, 279C.300, 279C.305, 279C.315, 279C.320, 279C.326, 279C.335, 279C.340, 279C.345, 279C.355, 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.390, 279C.395, 279C.400, 279C.405, 279C.410, 279C.430, 279C.435, 279C.440, 279C.445, 279C.450, 279C.460, 279C.505, 279C.510, 279C.515, 279C.520, 279C.525, 279C.530, 279C.540, 279C.545, 279C.550, 279C.555, 279C.560, 279C.565, 279C.570, 279C.580, 279C.585, 279C.590, 279C.605, 279C.650, 279C.655, 279C.660, 279C.665, 279C.670, 279C.800, 279C.805, 279C.810, 279C.815, 279C.820, 279C.825, 279C.830, 279C.835, 279C.840, 279C.845, 279C.850, 279C.855, 279C.860, 279C.865, 279C.870, 305.385, 351.086, 468A.720, 671.530, 701.005, 701.055 & 701.420

Proposed Adoptions: 137-046-0100, 137-046-0110, 137-046-0120, 137-046-0130, 137-046-0200, 137-046-0210, 137-046-0300, 137-046-0310, 137-046-0320, 137-046-0400, 137-046-0410, 137-046-0420, 137-046-0430, 137-046-0440, 137-046-0450, 137-046-0460, 137-046-0470, 137-046-0480, 137-047-0000, 137-047-0100, 137-047-0250, 137-047-0255, 137-047-0257, 137-047-0260, 137-047-0261, 137-047-0262, 137-047-0263, 137-047-0265, 137-047-0270, 137-047-0275, 137-047-0280, 137-047-0285, 137-047-0290, 137-047-0300, 137-047-0310, 137-047-0320, 137-047-0330, 137-047-0400, 137-047-0410, 137-047-0420, 137-047-0430, 137-047-0440, 137-047-0450, 137-047-0460, 137-047-0470, 137-047-0480, 137-047-0490, 137-045-0500, 137-047-0525, 137-047-0550, 137-047-0575, 137-047-0600, 137-047-0610, 137-047-0620, 137-047-0630, 137-047-0640, 137-047-0650, 137-047-0660, 137-047-0670, 137-047-0700, 137-047-0710, 137-047-0720, 137-047-0730, 137-047-0740, 137-047-0750, 137-047-0760, 137-047-0800, 137-048-0100, 137-048-0110, 137-048-0120, 137-048-0130, 137-048-0200, 137-048-0210, 137-048-0220, 137-048-0230, 137-048-0240, 137-048-0250, 137-048-0260, 137-048-0300, 137-048-0310, 137-048-0320, 137-049-0100, 137-049-0110, 137-049-0120, 137-049-0130, 137-049-0140, 137-049-0150, 137-049-0160, 137-049-0200, 137-049-0210, 137-049-0220, 137-049-0230, 137-049-0240, 137-049-0250, 137-049-0260, 137-049-0270, 137-049-0280, 137-049-0290, 137-049-0300, 137-049-0310, 137-049-0320, 137-049-0330, 137-049-0340, 137-049-0350, 137-049-0360, 137-049-0370, 137-049-0380, 137-049-0390, 137-049-0400, 137-049-0410, 137-049-0420, 137-049-0430, 137-049-0440, 137-049-0450, 137-049-0460, 137-049-0470, 137-049-0490, 137-049-0600, 137-049-0610, 137-049-0620, 137-049-0630, 137-049-0640, 137-049-0650, 137-049-0660, 137-049-0670, 137-049-0680, 137-049-0690, 137-049-0800, 137-049-0810, 137-049-0820, 137-049-0830, 137-049-0840, 137-049-0850, 137-049-0860, 137-049-0870, 137-049-0880, 137-049-0890, 137-049-0900, 137-049-0910

Proposed Repeals: 137-030-0000, 137-030-0005, 137-030-0006, 137-030-0008, 137-030-0010, 137-030-0011, 137-030-0012, 137-030-0013, 137-030-0014, 137-030-0015, 137-030-0020, 137-030-

0030, 137-030-0035, 137-030-0040, 137-030-0050, 137-030-0055, 137-030-0060, 137-030-0065, 137-030-0070, 137-030-0075, 137-030-0080, 137-030-0085, 137-030-0090, 137-030-0095, 137-030-0100, 137-030-0102, 137-030-0104, 137-030-0105, 137-030-0110, 137-030-0115, 137-030-0120, 137-030-0125, 137-030-0130, 137-030-0135, 137-030-0140, 137-030-0145, 137-030-0155, 137-035-0000, 137-035-0010, 137-035-0020, 137-035-0030, 137-035-0040, 137-035-0050, 137-035-0060, 137-035-0065, 137-035-0070, 137-035-0080, 137-040-0000, 137-040-0005, 137-040-0010, 137-040-0015, 137-040-0017, 137-040-0020, 137-040-0021, 137-040-0025, 137-040-0030, 137-040-0031, 137-040-0035, 137-040-0045, 137-040-0500, 137-040-0510, 137-040-0520, 137-040-0530, 137-040-0540, 137-040-0550, 137-040-0560, 137-040-0565, 137-040-0570, 137-040-0590

Last Date for Comment: 8-23-04

Summary: Adopts new comprehensive model public contract rules replacing existing model contract rules, which are repealed effective March 1, 2005. The rules apply to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. That is the operative date of the new Public Contracting Code, ORS Chapters 279A, B and C. ORS 279A.065 requires the Attorney General to adopt these model rules of procedure for public contracting of all public bodies authorized to conduct procurements.

The proposed rules will govern procedures for the competitive solicitation of contracts by public bodies (and related matters), as well as authorize alternative public contracting methods.

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

Rules Coordinator: Carol Riches

Address: Department of Justice, 1162 Court St. NE, Salem, OR 97301

Telephone: (503) 378-6313

Department of Veterans' Affairs Chapter 274

Date: 8-16-04
Time: 1:30 p.m.
Location: 700 Veterans Dr.
Oregon Veterans' Home
The Dalles, OR

Hearing Officer: Herb Riley

Stat. Auth.: ORS 406.030, 406.050, 408.370, 408.390, 408.520 & 408.530; Other Auth.: United States Code, Title 38 §3.50 and §101
Stats. Implemented: ORS 174.105, 406.030, 406.040, 406.050 & 408.370

Proposed Amendments: 274-040-0015

Last Date for Comment: 8-23-04

Summary: 274-040-0015 is being amended to further clarify the guidelines regarding admission to the Oregon Veterans' Home (OVH). The admission process is being amended to include a) veterans who do not currently reside in the State of Oregon, b) a spouse/surviving spouse of a veteran, and c) the surviving parents all of whose children dies while serving in the Armed Forces of the United States.

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

Rules Coordinator: Herbert D. Riley

Address: Department of Veterans' Affairs, 700 Summer St. NE, Salem, OR 97310-1201

Telephone: (503) 373-2055

Employment Department, Child Care Division Chapter 414

Date: 8-17-04
Time: 9 a.m.
Location: 875 Union NE
Employment Dept. Auditorium
Salem, OR 97311

Hearing Officer: Richard Luthe

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657A.620

Proposed Adoptions: 414-001-0010

Last Date for Comment: 8-17-04, 5 p.m.

Summary: The Employment Department, Child Care Division, is proposing to adopt: OAR 414-001-0010 to clarify that "actual and necessary travel expenses" includes payment of child care expenses.

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

Rules Coordinator: Richard L. Luthe

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

Telephone: (503) 947-1724

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Oregon Commission on Children and Families

Chapter 423

Date:	Time:	Location:
8-19-04	10 a.m.	530 Center St. NE 4th Floor Conf. Rm. Salem, OR

Hearing Officer: Mike Brott

Stat. Auth.: ORS 417.705 - 417.797 & 419A.170

Stats. Implemented:

Proposed Adoptions: 423-045-0025, 423-045-0030, 423-045-0035

Proposed Amendments: 423-001-0000, 423-001-0006, 423-005-0005, 423-005-0015, 423-005-0020, 423-010-0010, 423-010-0021, 423-010-0023, 423-010-0024, 423-010-0026, 423-010-0027, 423-010-0028, 423-010-0036, 423-010-0040, 423-045-0010, 423-045-0015, 423-045-0020

Last Date for Comment: 8-20-04

Summary: Administrative Rules are being revised to reflect changes since the last rule revision in 2001. Proposed revised rules include: aligning Healthy Start with the Healthy Families America model, changing Child Care Development Fund eligible expenditures and Court Appointed Special Advocates program requirements to match interagency agreements and federal requirements, implementing the Basic Capacity allocation for Local Commission operations, clarifying Medicaid administration expenditures, limiting requirements for certain biennial bidding processes, deleting rules for programs that are no longer funded, deleting quarterly reporting requirements of Local Commissions, deleting carry over policy and revising end-of-biennium fiscal reporting requirements, refining comprehensive planning requirements to clarify local involvement and plan updates, and incorporating policy changes adopted by the State Commission through its' standing Emerging Issues Committee. Numerous other changes of a grammatical nature also are included.

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

Rules Coordinator: Marsha Clark

Address: Oregon Commission on Children and Families, 530 Center St. NE - Suite 405, Salem, OR 97301

Telephone: (503) 373-1283

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Oregon Department of Education

Chapter 581

Date:	Time:	Location:
8-17-04	3 p.m.	Public Service Bldg. Rm. 251-A Salem, OR

Hearing Officer: Mike Reed

Stat. Auth.: ORS 338.025

Stats. Implemented: ORS 338.005 & 338.025

Proposed Adoptions: 581-020-0302

Last Date for Comment: 8-17-04

Summary: The proposed rule would clarify the definition of "public charter school" set out in ORS 338.005 by further defining "comprehensive instructional program." The proposed definition will allow school districts and the State Board of Education to respond consistently to charter applications.

If you have questions regarding this rule, please contact Randy Harnisch at 503.378.3600 x2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Debby Ryan at 503.378.3600, x2348 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:
8-17-04	3 p.m.	Public Service Bldg. Rm. 251-A 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: 8-17-04

Summary: The proposed amendment would expand the opportunity to utilize the juried assessment procedure to all assessed grade levels, grade three through CIM.

For questions regarding this rule, please contact Phyllis Rock at 503.378.3600, Ext. 2258 or e-mail Phyllis.rock@state.or.us. For a copy of this rule, please contact Debby Ryan at 503.378.3600, x2348 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:
8-17-04	3 p.m.	Public Service Bldg. Rm. 251-A Salem, OR

Hearing Officer: Mike Reed

Stat. Auth.: ORS 327.511

Stats. Implemented:

Proposed Amendments: 581-023-0035

Last Date for Comment: 8-17-04

Summary: Update for the new required codes and descriptions changes in the 2002 Program Budgeting and Accounting Manual.

If you have questions regarding this rule, please contact Randy Harnisch at 503.378.3600 X2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Debby Ryan at 503.378.3600, x2348.

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

Rules Coordinator: Debby Ryan

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Oregon Economic and Community Development Department Chapter 123

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

Stats. Implemented: ORS 285B.320 - 285B.371

Proposed Amendments: 123-011-0020, 123-011-0021, 123-011-0025, 123-011-0027, 123-011-0030, 123-011-0035, 123-011-0045, 123-011-0050

NOTICES OF PROPOSED RULEMAKING

Last Date for Comment: 8-22-04

Summary: The purpose of these rules is to provide procedures, standards and criteria for operation of the Oregon Economic Development Revenue Bond program. This filing is intended to clean up the text of the rules, amend some statutory references, clarify the maximum amount charged for closing fees, incorporate the "Oregon Express Bond Program" into the rules, and modify the fees charged for additional bonds issued under an initial eligibility amount. A copy of the proposed text is available on the Department's website at: http://www.econ.state.or.us/rule_review.htm

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 Liquor Control Commission Chapter 845

Date:	Time:	Location:
9-8-04	10 a.m.-12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Katie Hilton

Stat. Auth.: ORS 471, 471.030 & 471.730(1)&(5)

Stats. Implemented: ORS 471.335 & 471.730(8)

Proposed Amendments: 845-004-0101

Last Date for Comment: 9-22-04

Summary: This rule regulates the industrial use of alcohol in Oregon. The Commission has received a petition for rulemaking from Intel Corp and Association of Oregon Industries. The petition requests that the rule be amended to clarify and streamline application and processing requirements, reduce reporting requirements, and to change the fee structure so that it more closely reflects the Commission's cost of regulating industrial alcohol use.

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

Rules Coordinator: Katie Hilton

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

Telephone: (503) 872-5004

Oregon State Marine Board Chapter 250

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830

Proposed Adoptions: Rules in 250-025

Last Date for Comment: 8-31-04

Summary: From time to time the Marine Board is requested to adopt temporary rules governing recreational boating activities on Oregon's waters. Construction in or near lakes and reservoirs, streams, rivers and coastal bars can pose significant safety concerns about debris and equipment that might fall onto boats if they pass too closely to work zones. There are also concerns about high speed boat traffic causing wakes and compromising the integrity of worksites at water level.

Rules Coordinator: Jill E. Andrick

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

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

Stat. Auth.: ORS 830.110

Stats. Implemented:

Proposed Amendments: Rules in 250-019

Last Date for Comment: 8-31-04

Summary: The periodic review of Marine Board Procedural Rules provides an opportunity for members of the public to comment on rules governing the adoption, amending and repealing of local and special rules. The Board will accept comment and consider final rules at the next meeting in September.

Rules Coordinator: Jill E. Andrick

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

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

Oregon State Treasury Chapter 170

Stat. Auth.: ORS 287.014 - 287.029 as amended by Ch. 195, OL 2003, HB 2131 Sec. 1, 2003 Leg. Session

Stats. Implemented: ORS 288

Proposed Adoptions: 170-060-1010

Last Date for Comment: 8-21-04

Summary: Sets terms, conditions, and reporting requirements for local government issuers of bonds when entering into agreements for exchange of interest rates.

Rules Coordinator: Sally Furze

Address: Oregon State Treasury, 350 Winter St. NE, Suite 100, Salem, OR 97301

Telephone: (503) 378-4633

Oregon University System, University of Oregon Chapter 571

Date:	Time:	Location:
8-24-04	10 a.m.	Alea/Coquille Rms. EMU, UO Eugene, OR

Hearing Officer: Deb Eldredge

Stat. Auth.: ORS 351.070 & 352.004

Stats. Implemented: ORS 351.070 & 352.004

Proposed Amendments: 571-003-0025

Last Date for Comment: 8-24-04, 5 p.m.

Summary: Adds gender expression and gender identity to basis upon which grievances alleging prohibited discrimination may be filed.

**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

Oregon Watershed Enhancement Board Chapter 695

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.375(9)

Proposed Adoptions: Rules in 695-046

Proposed Repeals: Rules in 695-020

Last Date for Comment: 8-16-04, 5 p.m.

Summary: The Oregon Watershed Enhancement Board proposes relocating its administrative rules relating to grant applications for the lease or purchase of water rights from Division 20 to Division 46. Some ministerial changes to the wording of the rules are proposed to separate the rules from the land acquisition grant application rules and to enable them to stand alone. However, no substantive changes will be made to the water acquisition grant application rules. A public comment period for the proposed administrative rules will begin on August 2, 2004, and end at 5 p.m. on August 16, 2004. The proposed rules will be posted on OWEB's website at www.oweb.state.or.us after July 21, 2004. If unable to access OWEB's website, please request a copy of the proposed rules by calling or emailing Maribeth Mattson at 503-986-0202 or maribeth.mattson@state.or.us beginning July 22, 2004. You may also mail a request for a copy of the proposed rules to Maribeth Mattson, OWEB, Acquisition Rules, 775 Summer Street NE, Suite 360, Salem, OR 97301.

Rules Coordinator: Bonnie King

NOTICES OF PROPOSED RULEMAKING

Address: Oregon Watershed Enhancement Board, 775 Summer St. NE, Suite 360, Salem, OR 97301-1290
Telephone: (503) 986-0181

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Oregon Youth Authority
Chapter 416

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.010 & 420A.014
Proposed Adoptions: 416-330-0020, 416-330-0030, 416-330-0040

Proposed Amendments: 416-330-0000, 416-330-0010

Last Date for Comment: 8-31-04

Summary: The adoption of three new rules will incorporate language from OAR Chapter 416, Division 360 regarding placement of minority youth, will provide definitions relevant to these new rules, and will address administration of substitute care placements. The purpose has been slightly revised to include language regarding minority youth and rule numbering has been changed in order to include the three new proposed rules.

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 97301-3765

Telephone: (503) 378-3864

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Stat. Auth.: ORS 420A.025

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

Proposed Amendments: 416-170-0000, 416-170-0010, 416-170-0020, 416-170-0030

Last Date for Comment: 8-31-04

Summary: These rules are being amended to add definitions relevant to these rules and eliminate the Research Review Board and reassign those duties to the OYA Program Office staff. 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 97301-3765

Telephone: (503) 378-3864

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Stat. Auth.: ORS 420A.025

Stats. Implemented:

Proposed Repeals: 416-630-0000, 416-630-0010, 416-630-0020, 416-630-0030, 416-630-0040, 416-630-0050

Last Date for Comment: 8-31-04

Summary: Relevant portions of this rule will be incorporated into OAR Chapter 416, Division 340.

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 97301-3765

Telephone: (503) 378-3864

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Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 418.517, 420A.010, 420A.014 & 420.054

Proposed Amendments: 416-340-0000, 416-340-0010, 416-340-0020, 416-340-0030, 416-340-0040, 416-340-0050, 416-340-0060

Proposed Repeals: 416-340-0070, 416-340-0080, 416-340-0090, 416-340-0100, 416-340-0110

Last Date for Comment: 8-31-04

Summary: This rule will be amended to incorporate language regarding the same subject matter from OAR Chapter 416, Division 630. Amendment of this rule updates current language and organizational structure. 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 97301-3765

Telephone: (503) 378-3864

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Stat. Auth.: ORS 420A.025

Stats. Implemented:

Proposed Repeals: 416-360-0000, 416-360-0010, 416-360-0020, 416-360-0030, 416-360-0040

Last Date for Comment: 8-31-04

Summary: Relevant topics from this rule division were moved to Division 330.

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 97301-3765

Telephone: (503) 378-3864

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Racing Commission
Chapter 462

Date:	Time:	Location:
8-19-04	11 a.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 Adoptions: 462-200-0640

Last Date for Comment: 8-19-04

Summary: Provides rule for new type of wager.

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

Rules Coordinator: Carol N. Morgan

Address: Oregon Racing Commission, 800 NE Oregon St., Suite 310, Portland, OR 97232

Telephone: (503) 731-4052

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Secretary of State,
Archives Division
Chapter 166

Date:	Time:	Location:
8-20-04	10 a.m.	Oregon State Archives 800 Summer St. NE Salem, OR

Hearing Officer: Mary Beth Herkert

Stat. Auth.: ORS 192 & 357

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

Proposed Adoptions: Rules in 166-150

Proposed Repeals: Rules in 166-040, 166-100, 166-101, 166-103, 166-105, 166-107, 166-108, 166-109, 166-110, 166-111, 166-112, 166-113, 166-115, 166-116, 166-117, 166-118, 166-119, 166-121, 166-124, 166-125, 166-126

Last Date for Comment: 8-20-04

Summary: Repeals the current general records retention schedule for county and special district records and adopts a new records retention schedule for county and special district records.

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

Rules Coordinator: Julie Yamaka

NOTICES OF PROPOSED RULEMAKING

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

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

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**Secretary of State,
Corporation Division
Chapter 160**

Date:	Time:	Location:
8-16-04	9 a.m.-12 p.m.	255 Capitol St. NE Ste. 151 Salem, OR 97310

Hearing Officer: Gary Johnson

Stat. Auth.: 2001 SB 171 Sec. 97.0-526 & ORS 79.0526

Stats. Implemented: 2001 SB 171 Sec. 87.9-516 & ORS 79.0516

Proposed Amendments: 160-040-0202

Last Date for Comment: 8-16-04

Summary: This rule delineates the factors that the Secretary of State may use to determine if a record is within the scope of ORS Chapter 79, in accordance with ORS Ch. 79.0516(2)(h). In general, the kinds of collateral included in the Uniform Commercial Code fall within the scope of Ch. 79; those that are not included, such as birth certificates and driver's licenses, are outside the scope. The purpose of the rule is to prevent the noncommercial use of UCC filings for harassment and fraud.

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

Rules Coordinator: Kristine T. Hume

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

Telephone: (503) 986-2356

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

Stat. Auth.: ORS 246.150 & 255.325

Stats. Implemented: ORS 255.335

Proposed Adoptions: 165-020-0430

Last Date for Comment: 9-1-04

Summary: This proposed rule assigns position numbers and adjusts the terms of office of the district commissioners of the newly formed Joelson Road District, a special district formed in Douglas County at the May 18, 2004, Primary Election. The terms must be adjusted to provide for future elections in May of odd-numbered years, as provided in ORS 255.335.

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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**Travel Information Council
Chapter 733**

Stat. Auth.: ORS 377.700 - 377.840

Stats. Implemented: ORS 183.310 - 183.550

Proposed Amendments: Rules in 733-030

Last Date for Comment: 8-31-04

Summary: The Travel Information Council held a quarterly meeting on June 4, 2004. The Council proposed rule changes to remove rules relating to roadway sign location and spacing requirements for transfer to ODOT rules.

Rules Coordinator: Angela Willhite

Address: Travel Information Council, 229 Madrona Ave. SE, Salem, OR 97302

Telephone: (503) 378-4508

Water Resources Department Chapter 690

Date:	Time:	Location:
8-24-04	1-2 p.m. & 6-7 p.m.	725 Summer St. NE, Suite A Oregon Water Resources Dept. Conf. Rm. 124 Salem, OR
8-25-04	7-8 p.m.	1300 Wall St. Deschutes Services Bldg. De Armond Rm. Bend, OR

Hearing Officer: Adam Sussman

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 540.610 - 540.670 & 537.455 - 537.500

Proposed Adoptions: 690-018-0025

Proposed Amendments: 690-017-0010, 690-017-0100, 690-017-0400, 690-018-0010, 690-018-0012, 690-018-0014, 690-018-0020, 690-018-0040, 690-018-0050, 690-018-0062, 690-018-0080, 690-018-0090

Last Date for Comment: 9-8-04

Summary: The Water Resources Department is proposing to amend the Water Resource's Commission's rules relating to water right cancellation (OAR Chapter 690, Division 17) and the allocation of conserved water (OAR Chapter 690, Division 18).

The proposed changes to the water right cancellation rules would modify the cancellation request and affidavit requirements in order to enhance the notification of interested parties of proposed water right cancellation actions. The proposed rules would also establish timelines for the Department to initiate a water right cancellation proceeding under the provision of ORS 537.631.

The proposed changes to the allocation of conserved water rules are to: implement changes to the allocation of conserved water statutes (ORS 537.455 to 537.500) as a result of HB 2456 (Oregon Laws, 2003); implement fees established by HB 2268 (Oregon Laws 2003); clarify the applicant pays the newspaper notice publication costs; establish a requirement for district's seeking allocations of conserved water to adopt a policy (see proposed OAR 690-018-0030); and to make minor housekeeping changes to improve the readability of the rules

Highlights of the new statutory provisions being implemented include the applicant's ability to choose the priority date of the conserved water -- same as or one minute junior to the originating right; allowing for consideration of conservation projects implemented up to 5 years prior to application submittal; and providing for applications to be submitted for a "water use subject to transfer."

Background: During the 2003 Legislative Session, there were various bills aimed at addressing water right "ownership." None of the bills passed. At the close of the legislative session, the Department committed to making progress on the issues underlying the water right ownership bills, namely who should receive notice and who needs to concur in initiating a water right transaction with the Department that involves a shared delivery system such as that within an irrigation district.

To this end, the Department assembled a work group with diverse representation whose overall purpose is to identify and address water use relationships that involve a shared delivery system such as within an irrigation district. In particular, the group has been looking at issues of "notice" and "concurrence" as they relate to water right cancellations, allocations of conserved water, and water right transfers. The Department's objectives in establishing the work group are to work to ensure the protection of existing water rights, develop policies, legislative concepts or rules that unify the water user community, and to establish clear, understandable, efficient, and equitable processes and procedures.

The proposed changes to the water right cancellation rules (OAR Chapter 690, Division 17) and the proposed adoption of OAR 690-018-0030 (District Requirements) in the allocation of conserved water rules are based directly on the "notice" and "concurrence"

NOTICES OF PROPOSED RULEMAKING

deliberations of the work group. The Department also used the work group to develop proposed changes to the allocation of conserved water rules related to statutory changes by the 2003 Legislature and other housekeeping changes to improve the readability of the rules. **Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Adam Sussman

Address: Water Resources Department, 725 Summer St. NE, Ste. A, Salem, OR 97301

Telephone: (503) 986-0877

Date:	Time:	Location:
8-19-04	10-11 a.m.	725 Summer St. NE, Suite A Oregon Water Resources Dept. Conf. Rm. 124 Salem, OR
8-19-04	5-6 p.m.	725 Summer St. NE, Suite A Oregon Water Resources Dept. Conf. Rm. 124 Salem, OR

Hearing Officer: Debbie Colbert

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Proposed Amendments: 690-380-0100, 690-380-3000, 690-380-3100, 690-380-4010

Last Date for Comment: 9-8-04

Summary: The Water Resources Department is proposing to amend rules relating to water right transfers (OAR Chapter 690, Division 380) to streamline its transfer application requirements and potentially reduce the cost associated with a water right transfer. The proposed rule amendments also clarify that an electronically generated seal is acceptable on certified water right examiner maps and clarify other aspects of the mapping requirements for transfer applications.

Background: Under the Water Resources Commission's current transfer rules, a transfer application must include a "lot book report for the land to which the water right is appurtenant prepared by a title company." See OAR 690-380-300(13). The lot book requirement was added by rule to the list of application requirements in May 2003. The underlying purpose of the lot book requirement is to assist

the Department in verifying ownership of the affected land, and to verify that the applicant is the landowner or forwarding the application with landowner consent.

Since its addition to the transfer application requirements, the Department has received several comments internally and externally on the lot book requirement. Issues raised include 1) the cost associated with obtaining a lot book report from a title company, 2) the ambiguity in the minimum information required in a lot book report, and 3) the necessity of a lot book report for permanent versus temporary transfer applications.

The Department has evaluated the need for lot book reports and the value added to the application review process. Based on this review, the Department is proposing rule amendments as described below:

1) In order to ensure that the land ownership information is reliable and timely, the Department will require the submittal of a lot book report at the time the Department sends the draft preliminary determination to the applicant. Requiring the lot book after the applicant receives the draft preliminary review, rather than at the time of application, will help the applicant decide whether to make the investment in a lot book report based on the draft preliminary review.

2) The minimum information necessary for a lot book report is specified in the proposed rule amendments.

3) In lieu of the lot book report as part of the transfer application, the Department will require the name of the deeded landowner. If the applicant is not the deeded landowner, the applicant will provide a notarized and signed statement from the deeded landowner authorizing the change. The applicant must also provide a copy of written notification of any lien holders on the subject lands.

4) The lot book report will be required for permanent transfers, not temporary transfers since the water right reverts to the terms and conditions of the original right at the end of the temporary transfer period.

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

Rules Coordinator: Adam Sussman

Address: Water Resources Department, 725 Summer St. NE, Ste. A, Salem, OR 97301

Telephone: (503) 986-0877

ADMINISTRATIVE RULES

Board of Accountancy Chapter 801

Adm. Order No.: BOA 2-2004(Temp)

Filed with Sec. of State: 7-2-2004

Certified to be Effective: 7-2-04 thru 12-29-04

Notice Publication Date:

Rules Amended: 801-010-0050

Subject: The amendment permits the Board of Accountancy to allow candidates who apply for the computer-based Uniform CPA Exam an opportunity to voluntarily disclose their social security number to the Board, and for the Board to transfer the number to the Examination Contractor for candidate identification. The temporary rule does not REQUIRE candidates to provide a social security number.

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

801-010-0050

Application for Uniform CPA Examination

(1) Definitions.

(a) **Authorization to Test (ATT):** Issued by the Board of Accountancy to eligible exam candidates to authorize the candidate to test for specified sections of the CPA exam. The ATT may be issued for one or more CPA exam sections. Each ATT authorizes the candidate to take each CPA exam section designated in the ATT one time only. The ATT may become expired as to one exam section named in the ATT, and remain valid as to other specified exam sections. The candidate must submit a Re-examination Application and re-examination fee to the Board of Accountancy for any exam section that is expired under the ATT or to retake any section of the CPA Exam not passed.

(b) **Notice to Schedule (NTS):** Issued by NASBA and enables the candidate to schedule testing at an examination test center. The NTS shall remain open until the candidate schedules testing or until six months have elapsed since the NTS was issued, whichever occurs first.

(c) **Testing Center:** Computer testing facilities, approved by the Board and listed on the Board website, at which candidates may take the CPA examination. Testing centers are located throughout the United States, Guam, Puerto Rico and the Virgin Islands.

(d) **Testing Opportunity:** Each testing window is considered a testing opportunity. There are four testing opportunities per year. A candidate may test for a particular section only once per testing window. A candidate may not retake a failed test section(s) in the same testing window.

(e) **Testing Windows:** A three-month period in which candidates have an opportunity to take the CPA exam. The testing window is comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered so that maintenance may be performed.

(2) Applications.

(a) Applications for the CPA exam shall be submitted on a form provided by the Board and shall be accompanied by the appropriate fee. The act of filing an application for the CPA exam constitutes an agreement by the candidate to observe and comply with the CPA Exam rules adopted by the Board.

(b) An application will not be reviewed until the application fee and all required supporting documents have been received, including proof of identity (as determined by the Board and specified on the application form), official transcripts and evidence that the candidate has met eligibility requirements.

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

(d) Candidates shall file an initial application when applying to take the CPA exam for the first time in Oregon. Thereafter candidates shall file a re-examination application. Each application filed shall specify the exam sections to be taken under that application.

(e) Candidates shall pay the CPA exam application fee designated in OAR 801-010-0010 to the Board. All other fees associated with the CPA exam are required to be paid to NASBA. All CPA exam fees are non-refundable. If a candidate fails to appear for a scheduled testing at an approved test center, all fees paid will be forfeited for the examinations scheduled on that day;

(f) At the time of application and during the time any ATT issued by the Oregon Board of Accountancy is open, the candidate shall not have an open ATT for the same section in any other state or jurisdiction.

(g) The candidate shall certify at the time of application that he or she is in compliance with subsection (f) of this rule. Falsifying this certification or including any false, fraudulent, or materially misleading statements on the application for the examination, or including any material omission on the application for the examination shall be cause for disciplinary action under ORS 673.170.

(h) When an application is approved, the Board or its designee will forward authorization to test (ATT) for the computer-based CPA exam to the candidate and to the NASBA National Candidate Database.

(i) The Board will offer a candidate the opportunity to voluntarily disclose the candidate's social security number to the Board so that the Board may provide the social security number to NASBA for identification purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADMINISTRATIVE RULES

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

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

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

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

(5) **Authorization to Test and Notice to Schedule.**

(a) An ATT authorizes the candidate to test one time for those sections of the CPA Exam that are specified in the ATT. An ATT is effective for six months from the date on which the corresponding NTS is issued or until the NTS expires, whichever occurs first; however, the ATT will expire ninety (90) days after it is issued if the candidate has not requested an NTS and paid the appropriate fees to NASBA.

(b) **Expiration of the ATT.** Authorization to take a specified exam section will expire on any of the following events:

(A) When the candidate schedules and takes a designated exam section;

(B) If the candidate schedules a testing date for a designated exam section but fails to appear and take the section at the scheduled time;

(C) If the candidate fails to schedule a designated exam section within the six-month period defined by the NTS; or

(D) If the candidate fails to request an NTS and pay the appropriate fees to NASBA within 90 days of the date the ATT is issued.

(c) **Suspension of the ATT.** An ATT may be suspended by the Board of Accountancy based on a report from NASBA that a problem related to the candidate is identified on the National Candidate Database, or for other good cause as determined by the Board.

(d) Payment of CPA Exam testing fees. To obtain a Notice to Schedule (NTS), the candidate must remit the CPA Exam testing fees required for the CPA exam sections specified in the ATT to NASBA within ninety (90) days from the date the ATT is issued. Failure to remit the required fees and obtain the NTS will cause the ATT to expire, and the candidate must submit a re-examination application to the Board, with the appropriate CPA Exam Fee, to receive another ATT.

(e) **NTS.** When the candidate receives an ATT from the Board, the candidate is required to:

(A) Contact NASBA to request the NTS;

(B) Submit to NASBA payment of all fees related to testing of the CPA Exam sections authorized by the ATT;

(C) Upon receipt of the NTS, contact an approved test center to schedule the time and place for testing of the exam sections authorized by the ATT. CPA Exam sections do not have to be scheduled on the same date.

(D) The NTS remains valid for each exam section until the candidate schedules testing for that specific section, or for six months from the date the NTS was issued, whichever occurs first.

(E) The NTS expires as to each individual exam section when the candidate schedules testing for that section, whether or not the candidate appears at the scheduled testing appointment.

(f) **Testing.**

(A) A candidate may schedule testing at an approved testing center in Oregon or in another jurisdiction. A list of approved testing centers is on the Board of Accountancy website.

(B) Candidates must comply with the procedures and rules of the test center.

(g) **Re-examination.** A Re-examination Application and payment of the appropriate fee to the Board of Accountancy is required:

(A) To retake any exam section that the candidate does not pass;

(B) To obtain an NTS for any exam section that the candidate failed to schedule during the six month period for which a previous NTS was issued;

(C) To obtain an NTS for any exam section for which the candidate failed to obtain an NTS during the ninety (90) day period after the date the ATT was issued.

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

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

Hist.: IAB 10, f. 2-7-63; IAB 14, f. 8-15-68; IAB 20, f. 10-22-71, ef. 11-15-71; IAB 34, f. 1-29-74, ef. 2-25-74; IAB 41, f. & ef. 12-2-76; IAB 44, f. & ef. 3-31-77; IAB 48, f. & ef. 7-21-77; IAB 6-1978, f. & ef. 6-22-78; IAB 7-1981, f. & ef. 7-27-81; IAB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB

5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 1-2004(Temp), f. & cert. ef. 3-15-04 thru 7-1-04; BOA 2-2004(Temp), f. & cert. ef. 7-2-04 thru 12-29-04

Board of Examiners for Engineering and Land Surveying Chapter 820

Adm. Order No.: BEELS 2-2004

Filed with Sec. of State: 7-14-2004

Certified to be Effective: 7-14-04

Notice Publication Date: 6-1-04

Rules Adopted: 820-001-0020

Rules Amended: 820-001-0000, 820-010-0010, 820-010-0300, 820-010-0325

Subject: OAR 820-001-0000 - Temporary rules do not have the same notice requirements as permanent Rules, therefore, the word permanent is being added to distinguish requirements for permanent rulemaking from temporary rulemaking.

OAR 820-001-0020 - Creates a rule for public records request.

OAR 820-010-0010 - Clarifies the status a license may be placed into; reclassifying "Inactive" to "Exempt" and adding a "Delinquent" status.

OAR 820-010-0300 - Revises the current policy on refunds and charges.

OAR 820-010-0325 - Revises the Agency budget for the 03-05 biennium.

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

820-001-0000

Rule Changes

Prior to the adoption, amendment, or repeal of any permanent rule, the Oregon Board of Examiners for Engineering and Land Surveying shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least twenty-one (21) days prior to the effective date.

(2) By mailing a copy of the notice at least thirty (30) days prior to the effective date to the persons on the Oregon Board of Examiners for Engineering and Land Surveying' mailing list established pursuant to ORS 183.335(7), and the following publications and organizations:

(a) Publications:

(A) Associated Press;

(B) Portland Business Today.

(b) State Societies:

(A) American Council of Engineering Companies of Oregon;

(B) Professional Engineers of Oregon;

(C) Professional Land Surveyors of Oregon;

(D) Structural Engineers Association of Oregon;

(E) Oregon Association of County Engineers and Surveyors.

(c) Local branches and chapters of the national societies listed below:

(A) American Society of Heating, Refrigeration, and Air Conditioning Engineers;

(B) American Institute of Industrial Engineers;

(C) American Society of Civil Engineers;

(D) American Society of Mechanical Engineers;

(E) Institute of Electrical and Electronic Engineers;

(F) Illuminating Engineers Society;

(G) American Institute of Chemical Engineers.

(d) Colleges, universities and community colleges within the State with an engineering and/or land surveying degree program.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 18, f. & ef. 1-13-76; EE 1-1981, f. 5-19-81, ef. 6-1-81; EE 2-1985, f. 12-4-85, ef. 12-16-85; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 2-2004, f. & cert. ef. 7-14-04

820-001-0020

Public Records Requests

(1) **Scope and Applicability.** This rule governs requests for inspection of Board documents under the Public Records Law, ORS Chapter 192.

(2) All requests must be submitted in writing for copies of public records pertaining to the Board.

ADMINISTRATIVE RULES

(3) The Board charges fees as follows for reimbursement of the actual cost in making public records available upon request:

(a) Postage/freight — First Class or rate(s) based on weight for public records mailed or sent by carrier.

(b) Audio Cassette — 90 minute — \$10.00 each.

(c) Lists, or computer disk of licensees — \$50.

(d) Photocopies — \$.25 per page.

(e) A waiver or reduction of fees requested under ORS 192.440 must be submitted in writing, show how a waiver or reduction is in the public interest and that availability will benefit the general public.

(f) No fees are charged:

(A) To Board members when conducting official Board business;

(B) For first five pages of any Board documents;

(C) To public libraries, public educational institutions, or federal, state, county or city agencies participating in a cooperative program with the Board; or

(D) To examine records readily available which do not require supervision during the inspection.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2004, f. & cert. ef. 7-14-04

820-010-0010

Definitions

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

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

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

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

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

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

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

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

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

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

with regard to unwritten title transfer and admissible evidence, as well as the current statutory laws in the State of Oregon with respect to land subdivision and the legal responsibilities of a land surveyor.

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

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

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

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

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

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

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

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

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

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

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

(15) Active Status means the registrant is authorized to engage in the professional practice of engineering or land surveying, and is in good standing with regard to payment of annual renewal fees and Continuing Professional Development requirements.

(16) Exempt Status means the registrant has notified the Board that they are not providing or offering to provide professional engineering or land surveying services to the public of the State of Oregon and requests exemption from Continuing Professional Development requirements.

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

(18) Delinquent Status means the registrant has not renewed their license or has not completed the Continuing Professional Development requirements.

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

(20) Acronyms:

(a) ACCE — American Council for Construction Education;

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

(c) EAC — Engineering Accreditation Commission of ABET;

(d) TAC — Technology Accreditation Commission of ABET;

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

(f) EI — Engineering Intern;

ADMINISTRATIVE RULES

(g) LSI — Land Surveying Intern.
Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 17, f. 4-22-74, ef. 5-11-74; EE 20, f. & ef. 12-15-77; EE 1-1987, f. & ef. 1-5-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 4-2000, f. & cert. ef. 8-4-00; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 1-2002, f. & cert. ef. 3-13-02; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 2-2004, f. & cert. ef. 7-14-04

820-010-0300

Refunds and Charges

- (1) Examination fees are non-refundable.
- (2) Refunds of examination application fees will not be made to individuals who fail to qualify for, withdraw from, or do not appear for, the examination.
- (3) Comity application fees will not be refunded, but may be applied toward examination fee if requested by the applicant.
- (4) If the Board receives payment of any fees by check and the check is deposited and returned to the Board, the payor of the fees will be assessed a charge of \$20 in addition to the required payment of the fees.

Stat. Auth.: ORS 670 & 672
Stats. Implemented:
Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 2-1985, f. 12-4-85, ef. 12-16-85; BEELS 2-2004, f. & cert. ef. 7-14-04

820-010-0325

Budget

The amount of \$1,803,000 is established for the biennium beginning July 1, 2003, as the intended limit for payment of expenses from fees, moneys or other revenue, including Miscellaneous Receipts, collected or received by the Board. The expenditure limitation includes an operating budget of \$1,553,000 and an examination budget of \$250,000.

Stat. Auth.: ORS 670.310 & 672.155
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 1-1999, f. 5-27-99, cert. ef. 7-1-99; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 2-2002, f. & cert. ef. 5-15-02; BEELS 4-2003, f. 5-14-03, cert. ef. 7-1-03; BEELS 2-2004, f. & cert. ef. 7-14-04

Board of Geologist Examiners
Chapter 809

Adm. Order No.: BGE 3-2004

Filed with Sec. of State: 6-23-2004

Certified to be Effective: 6-23-04

Notice Publication Date: 5-1-04

Rules Amended: 809-001-0000

Subject: 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 rulemaking from those for temporary rulemaking.

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

809-001-0000

Notice

Before adoption, amendment, or repeal of any permanent rule, the State Board of Geologist Examiners shall give notice of the intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days before the effective date of the intended action;
- (2) By mailing a copy of the notice to persons on the State Board of Geologist Examiners mailing list established under ORS 183.335(7);
- (3) By mailing or furnishing a copy of the notice to:
 - (a) The Associated Press;
 - (b) Association of Engineering Geologists;
 - (c) Department of Geology and Mineral Industries;
 - (d) Department of Geology, Oregon State University;
 - (e) Department of Geology, University of Oregon;
 - (f) Department of Geology, Portland State University;
 - (g) Capitol Press Room;
 - (h) Earth and Physical Science Department, Western Oregon University; and

(i) Department of Geology, Southern Oregon University.
Stat. Auth.: ORS 183, 192 & 672.310(1), 672
Stats. Implemented: ORS 183.335
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 1-1983, f. & ef. 2-17-83; GE 1-1984, f. & ef. 2-1-84; BGE 1-2002, f. & cert. ef. 2-6-02; BGE 3-2004, f. & cert. ef. 6-23-04

Adm. Order No.: BGE 4-2004

Filed with Sec. of State: 6-23-2004

Certified to be Effective: 6-23-04

Notice Publication Date: 5-1-04

Rules Amended: 809-001-0005

Subject: The rule change allows the Board to use the January 15, 2004, edition of the Attorney General's Model Rules of Procedure.
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; BGE 4-2004, f. & cert. ef. 6-23-04

Adm. Order No.: BGE 5-2004

Filed with Sec. of State: 6-23-2004

Certified to be Effective: 6-23-04

Notice Publication Date: 5-1-04

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.

This rule is currently a Temporary Rule and presented in the May 1, 2004, Oregon Bulletin.

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.

ADMINISTRATIVE RULES

(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 substantial 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 communica-

tions 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

(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; BGE 5-2004, f. & cert. ef. 6-23-04

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Board of Medical Examiners Chapter 847

Adm. Order No.: BME 13-2004
Filed with Sec. of State: 7-13-2004
Certified to be Effective: 7-13-04
Notice Publication Date: 6-1-04

Rules Adopted: 847-001-0020, 847-001-0025
Rules Amended: 847-001-0000, 847-001-0005, 847-001-0015
Subject: The adopted administrative rules are needed because the recent adoption of the Model Rules of Procedure for Contested Cases by the Department of Justice required the Board's rules to be consistent, and at the same time new rules were needed pertaining to discovery and seeking rulings for summary judgment.
Rules Coordinator: Diana M. Dolstra—(503) 229-5873, ext. 223

847-001-0000 Notice of Proposed Rule

Prior to adoption, amendment or repeal of any permanent rule, the Board of Medical Examiners shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the intended action.

(2) By mailing a copy of the notice to persons on the Board of Medical Examiners' mailing list established pursuant to ORS 183.335 (7) at least 28 days before the effective date of the rule; and

(3) By mailing or furnishing a copy of the notice to:

- (a) The Associated Press; and
- (b) The Capitol Press Room.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 183.341, 677.200, 677.208

Hist.: ME 1-1988, f. & cert. ef. 1-29-88; ME 20-1994, f. & cert. ef. 10-26-94; BME 13-2004, f. & cert. ef. 7-13-04

847-001-0005 Model Rules of Procedure

The Board of Medical Examiners adopts in their entirety the Attorney General's Model Rules of Procedure under the Administrative Procedures Act bearing the effective date of March 1986 for any contested case for which a Complaint and Notice or Order of Emergency Suspension was issued by the Board prior to January 1, 2000. The Board, however, may request that the chief administrative law judge assign an administrative law judge to conclude the proceedings in a contested case where the Complaint and Notice or Order of Emergency Suspension was issued prior to January 1, 2000. In such event, the Attorney General Model Rules of Procedure for Contested Cases (OAR 137-003-0000, and 0501 to 137-003-0700), as amended, shall apply.

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

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 183.341, 677.200, 677.208

Hist.: ME 4, f. 11-3-71, ef. 11-15-71; ME 26, f. 3-15-72, ef. 4-1-72; ME 27, f. 3-27-72, ef. 4-15-72; ME 30, f. 3-5-74, ef. 3-25-74; ME 32, f. & ef. 5-11-76; Renumbered from 847-060-0005; ME 2-1978, f. & ef. 7-31-78; ME 3-1980, f. & ef. 5-14-80; ME 6-1980, f. & ef. 8-13-80; ME 1-1982, f. & ef. 1-28-82; ME 5-1983, f. & ef. 11-3-83; ME 2-1986, f. & ef. 4-23-86; ME 14-1987, f. & ef. 8-3-87; ME 1-1988, f. & cert. ef. 1-29-88; ME 13-1988, f. & cert. ef. 10-20-88; ME 13-1988, f. & cert. ef. 10-20-88; ME 10-1990, f. & cert. ef. 8-7-90; ME 13-1990, f. & cert. ef. 8-16-90; ME 2-1992, f. & cert. ef. 4-17-92; ME 20-1994, f. & cert. ef. 10-26-94; BME 13-2000, f. & cert. ef. 10-30-00; BME 13-2004, f. & cert. ef. 7-13-04

847-001-0015 Delegation of authority

(1) The Board of Medical Examiners (Board) has delegated to the Executive Director the authority to make certain procedural determinations on its behalf on matters arising under the Attorney General's Model Rules of Procedure for Contested Cases in OAR 137-003-0501 to 137-003-0700. The procedural functions include, but are not limited to:

(a) Authorize or deny requested discovery in a contested case, to include specifying the methods, timing and extent of discovery;

(b) Whether a request for hearing filed after the prescribed time shall be accepted, based upon a finding that the cause for failure to timely file a request for hearing was beyond the reasonable control of the party. In making this determination, the Executive Director may require the request to be supported by an affidavit or other writing to explain why the request is late and may conduct such further inquiry as deemed appropriate. The Executive Director may authorize a hearing on whether the late filing should be accepted;

(c) Whether the late filing of a document may be accepted based upon a finding of good cause;

(d) Whether to issue a subpoena for the attendance of witnesses or to produce documents at the hearing;

(e) Prior to the issuance of a proposed order issued by an administrative law judge, whether the Board will consider taking notice of judicially cognizable facts or of general, technical or scientific facts in writing which are within the specialized knowledge of the Board;

(f) The Executive Director may decide whether to submit to the Board prior to an administrative law judge's proposed final order the following issues:

(A) The Board's interpretation of its rules and applicable statutes;

(B) Which rules or statutes are applicable to a proceeding;

(C) Whether the Board will answer a question transmitted to it by the hearing officer.

(g) In regard to a proposed order issued by an administrative law judge, whether the Board's legal representative will file exceptions and present argument to the Board;

(h) Before issuance of a proposed order, whether a party may obtain an immediate review from the Board on any of the following:

(A) A ruling on a motion to quash a subpoena under OAR 137-003-0585;

(B) A ruling refusing to consider as evidence judicially or officially noticed facts presented by the Board under OAR 137-003-0615 that is not rebutted by a party;

(C) A ruling on the admission or exclusion of evidence based on a claim of the existence or non-existence of a privilege.

(2) All actions taken under this delegation shall be reported to the Board at the regularly scheduled meeting in which the Board deliberates on the proposed order in the case.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 183.341, 677.200, 677.208

Hist.: BME 13-2000, f. & cert. ef. 10-30-00; BME 13-2004, f. & cert. ef. 7-13-04

847-001-0020 Discovery

(1) An order issued by an administrative law judge requiring discovery shall be limited to a list of witnesses, to include their full name, academic degrees, and work address, to be called by the parties in their case in chief and the documents that the parties tend to introduce as exhibits at the contested case hearing during the presentation of their case in chief.

(2) Requests for admission and written interrogatories shall not be required, unless authorized by the Board.

(3) Parties shall provide the list of witnesses and documents no later than ten working days prior to the beginning of the contested case hearing.

(4) Parties may submit requests for discovery to the Board.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 183.341, 677.200, 677.208

Hist.: BME 13-2004, f. & cert. ef. 7-13-04

847-001-0025 Motion for Ruling on Legal Issues (Summary Judgment)

Motions for ruling on legal issues (summary judgment) are not available to the parties for contested cases.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 183.341, 677.200, 677.208

Hist.: BME 13-2004, f. & cert. ef. 7-13-04

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Adm. Order No.: BME 14-2004
Filed with Sec. of State: 7-13-2004
Certified to be Effective: 7-13-04
Notice Publication Date: 6-1-04
Rules Adopted: 847-008-0022

Rules Amended: 847-008-0005, 847-008-0015, 847-008-0040, 847-008-0045, 847-008-0055

Subject: The adopted administrative rules change the registration renewal period for podiatric physicians to the same registration renewal period as for MD/DO's, allows physicians practicing tel-radiology from out-of-state to have active status, requires license renewal form to be in the Board office by the end of the last business day in the biennium, and lists statuses that are required to reactivate prior to the licensee actively practicing in Oregon.

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

ADMINISTRATIVE RULES

847-008-0005

Registration Periods

Every licensee of the Board shall renew their registration prior to the last day of each renewal period as follows:

(1) The registration renewal form and fee for Doctors of Medicine, Doctors of Osteopathy, Doctors of Podiatric Medicine and Physician Assistants must be received in the Board office during regular business hours on or before December 31 of each odd-numbered year.

(2) The registration renewal form and fee for Licensed Acupuncturists must be received in the Board office during regular business hours on or before June 30 of each even-numbered year.

(3) If the registration renewal form and fee are not received in the Board office during regular business hours on or before the last day of the renewal period the license shall lapse.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.172

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 5-1991, f. & cert. ef. 7-24-91; ME 11-1992, f. & cert. ef. 10-22-92; BME 7-1998, f. & cert. ef. 7-22-98; BME 3-2003, f. & cert. ef. 1-27-03; BME 14-2004, f. & cert. ef. 7-13-04

847-008-0015

Active Registration

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

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

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

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

(4) The licensee practices teleradiology, as defined in OAR 847-008-0022.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.228

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 5-1991, f. & cert. ef. 7-24-91; BME 2-2004, f. & cert. ef. 1-27-04; BME 14-2004, f. & cert. ef. 7-13-04

847-008-0022

Teleradiology Registration

(1) Teleradiology is the electronic transmission of radiological images from one location to another for the purposes of interpretation and/or consultation.

(2) A physician whose specialty is radiology or diagnostic radiology who practices in a location outside of Oregon and receives radiological images via teleradiology from an Oregon location for interpretation or consultation and who communicates his/her radiological findings back to the ordering physician may register and pay a biennial active registration fee. Licensee must file an affidavit before beginning active practice in Oregon.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.172

Hist.: BME 14-2004, f. & cert. ef. 7-13-04

847-008-0040

Process of Registration

(1) The application for registration shall be made on a form provided by the Board.

(2) Except as provided in OAR 847-008-0015(1) and (2) and OAR 847-008-0025 the application shall be accompanied by the appropriate fee as listed in OAR 847-005-0005.

(3) The application for registration shall be filed with the Board by the first day of the month in which the license or certification is due to expire.

(4) At its discretion, the Board may waive the fee for good and sufficient reason.

(5) The Board shall mail to all licensees who have complied with this section a certificate of registration which shall remain in effect until the end of the last business day of the registration period.

(6) Such certificate shall be displayed in a prominent place in the holder's primary place of practice.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.172

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; BME 14-2004, f. & cert. ef. 7-13-04; BME 14-2004, f. & cert. ef. 7-13-04

847-008-0045

Failure to Apply for Registration

(1) A license or certificate shall be considered delinquent if not renewed by the first day of the final month of the registration period.

(2) A license or certification shall lapse if not received in the Board office during regular business hours on or before the final day of the registration period.

(3) A licensee who wishes to officially surrender license must submit the engrossed license and wallet-sized card. This must be done prior to the expiration of registration.

(4) Should a licensee continue to practice while a license or certificate is lapsed, that individual shall be considered practicing without a valid license or certificate, and may be subject to prosecution under ORS 677.205, or may be subject to discipline by the Board.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.172

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 5-1991, f. & cert. ef. 7-24-91; ME 12-1993(Temp), f. & cert. ef. 10-27-93; ME 2-1994, f. & cert. ef. 1-24-94; BME 14-2004, f. & cert. ef. 7-13-04

847-008-0055

Reactivation from Locum Tenens/Inactive/Emeritus to Active/Locum Tenens Status

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

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

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

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

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

(e) Verification of current licensure sent directly from each of the State Boards in the United States or Canada where the licensee has been practicing during the past 5 years, or from the date the licensee to practice in Oregon changed to inactive, locum tenens or emeritus status whichever is the shorter period of time, showing license number, date issued, and status;

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

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

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

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

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.172

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 2-1997, f. & cert. ef. 7-28-97; BME 6-2000, f. & cert. ef. 7-27-00; BME 7-2002, f. & cert. ef. 7-17-02; BME 2-2004, f. & cert. ef. 1-27-04; BME 14-2004, f. & cert. ef. 7-13-04

Adm. Order No.: BME 15-2004

Filed with Sec. of State: 7-13-2004

Certified to be Effective: 7-13-04

Notice Publication Date: 6-1-04

Rules Amended: 847-020-0130, 847-020-0170

Subject: The adopted administrative rules require graduates of medical schools not accredited by the Liaison Committee on Medical Education or the Committee on Accreditation of the Canadian Medical Schools of the Canadian Medical Association must have completed all courses by physical on-site attendance. Proposed rules also

ADMINISTRATIVE RULES

adds an examination combination accepted by the Board if completed prior to 2000, and updates the language referring to the different physician (MD/DO) national certification examinations to be consistent with past rules changes.

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

847-020-0130

Basic Requirements for Licensure of a Foreign Medical School Graduate

(1) The following requirements must be met in lieu of graduation from a school of medicine approved by the Liaison Committee on Medical Education or the Committee on the Accreditation of the Canadian Medical Schools of the Canadian Medical Association in order to qualify under ORS 677.100.

(2) The requirements for licensure of the foreign medical school graduate are as follows:

(a) Must speak English fluently and write English legibly.

(b) Must have graduated from a foreign school of medicine after attendance of at least four full terms of instruction of eight months each, with all courses having been completed by physical on-site attendance. This requirement may be waived for any applicant for licensure who has graduated from a foreign school of medicine, and has substantially complied with the attendance requirements provided herein, and has been certified by a specialty board recognized by the American Board of Medical Specialties. If any of the clinical clerkships were taken in an institution in a country other than that in which the school is licensed, the institutions in which the clerkships were served must provide a certificate to prove the time spent and the satisfactory completion of the clerkships. After June 30, 1988, clinical clerkships served in the U.S. or Canada shall be taken only in institutions which conduct residencies approved by the Accreditation Council for Graduate Medical Education or the College of Family Physicians of Canada or the Royal College of Physicians and Surgeons of Canada or the American Osteopathic Association in the specific subject of the clerkship. The foreign school of medicine must be listed in the World Directory of Medical Schools published by the World Health Organization or any other such foreign school of medicine approved by the Oregon Board of Medical Examiners pursuant to OAR 847-031-0001, 847-031-0010, 847-031-0020, 847-031-0030 and 847-031-0040.

(c) Must have obtained the Standard Educational Commission for Foreign Medical Graduates Certificate issued by the Educational Commission for Foreign Medical Graduates. This requirement may be waived if accredited postgraduate training was completed in Canada, or prior to the enforcement of the ECFMG certification, or if the applicant has been certified by a specialty board recognized by the American Board of Medical Specialties. In lieu of the ECFMG certificate, Fifth Pathway applicants shall show evidence of passing the examination pursuant to Oregon standards.

(d) Must have satisfactorily completed an approved internship and/or residency (or clinical fellowship) in the United States or Canada of not less than three years of progressive training in not more than two specialties in not more than two training programs accredited for internship, residency or fellowship training by the Accreditation Council for Graduate Medical Education or the College of Family Physicians of Canada or the Royal College of Physicians and Surgeons of Canada or the American Osteopathic Association. A valid certificate issued by a specialty board recognized by the American Board of Medical Specialties may be used in lieu of the three years of post graduate training required by subsection (d) of this section.

(e) A graduate of a school of medicine approved by the Oregon Board of Medical Examiners pursuant to OAR 847-031-0001, 847-031-0010, 847-031-0020, 847-031-0030 and 847-031-0040 must have satisfactorily completed not less than one year of approved training in the United States or Canada in not more than one hospital accredited for internship, residency or fellowship training by the Accreditation Council for Graduate Medical Education or the Canadian Medical Association or the Royal College of Physicians and Surgeons of Canada.

(f) Must pass a written licensure examination as provided in ORS 677.110 and OAR 847-020-0170.

(3) If a foreign medical graduate has met the basic requirements for licensure and wishes to pursue further postgraduate training beyond the postgraduate level (3) three year, or wishes to practice medicine in this state, an unlimited license must be applied for and obtained.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.110

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 8-2002, f. & cert. ef. 7-17-02; BME 10-2004(Temp), f. & cert. ef. 4-22-04 thru 10-15-04; BME 15-2004, f. & cert. ef. 7-13-04

847-020-0170

Written Examination, SPEX Examination and Personal Interview

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

(a) Federation Licensing Examination (FLEX) Component I and FLEX Component 2.

(b) National Board of Medical Examiners (NBME) Part I and Part II and Part III.

(c) National Board of Medical Examiners (NBME) Part I or United States Medical Licensing Examination (USMLE) Step 1, and NBME Part II or USMLE Step 2 and NBME Part III or USMLE Step 3.

(d) NBME Part I or USMLE Step 1, and NBME Part II or USMLE Step 2, and FLEX Component 2.

(e) FLEX Component 1 and USMLE Step 3. A score of 75 or above must be achieved on FLEX Component 1 and the score achieved on USMLE Step 3 must be equal to or exceed the figure established by the Federation as a recommended passing score.

(f) The score achieved on each Step, Part or Component must equal or exceed the figure established by the USMLE Program, the National Board of Medical Examiners or the Federation of State Medical Boards as a passing score. All Steps, Parts or Components listed in OAR 837-020-0170(1)(a)-(f) must be administered prior to January 2000, except for applicants who participated in and successfully completed a combined MD/DO/PhD program; or

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

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

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

(B) Effective April 23, 2004, to be eligible for licensure, an applicant must have passed USMLE Step 3 or NBOME's COMLEX Level within four attempts whether for Oregon or any other state. After the third failed attempt, the applicant must have completed one additional year of postgraduate training in the United States or Canada prior to readmission to the examination. The Board must approve the additional year of training to determine whether the applicant is eligible for licensure. The applicant, after completion of the required year of training, must have passed USMLE Step 3 or COMLEX Level 3 on their fourth and final attempt. If the fourth attempt of USMLE Step 3 is failed, the applicant is not eligible for Oregon licensure. If the applicant did not complete a year of training approved by the Board between the third and fourth attempt to pass USMLE Step 3 or COMLEX Level 3, the applicant is not eligible for licensure.

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

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

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

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

(b) The applicant may not have taken the FLEX examination more than a total of four times, whether in Oregon or other states, whether the components were taken together or separately. After the third failed attempt, the applicant must have satisfactorily completed one year of

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approved training in the United State or Canada prior to having taken the entire FLEX examination at one sitting on the fourth and final attempt.

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

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

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

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

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

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

(A) Completed an accredited one year residency, or

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.110

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 5-2003, f. & cert. ef. 1-27-03; BME 10-2003, f. & cert. ef. 5-2-03; BME 14-2003(Temp), f. & cert. ef. 9-9-03 thru 3-1-04; BME 3-2004, f. & cert. ef. 1-27-04; BME 7-2004, f. & cert. ef. 4-22-04; BME 15-2004, f. & cert. ef. 7-13-04

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Notice Publication Date: 5-1-04, 6-1-04

Rules Amended: 847-080-0010, 847-080-0019

Subject: The Board is adding 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 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. The adopted rules move the podiatric physicians into the same renewal period as the MD/DO's and physician assistants, which is January 1 to December 31 of every odd-numbered year.

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

847-080-0010

Requirements for Licensure

The applicant for licensure shall be required to:

(1) Successfully pass the National Board of Podiatric Medical Examiners (NBPME) examination Part I and Part II. Effective July 15, 2004, the applicant for licensure must also pass the NBPME examination Part III.

(2) Have satisfactorily completed one year of post-graduate training served in a hospital that is approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, or

(3) Have received a certificate of completion for one year of post-graduate training in a hospital residency program that was not approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association; and

(4) Have been certified by the American Board of Podiatric Orthopedics and Primary Podiatric Medicine, the American Board of Podiatric Surgery, or the American Board of Podiatric Public Health.

(5) Have satisfactorily met the requirements of ORS 677.825.

(6) No application will be accepted on the basis of reciprocity or written examination, other than the National Board of Podiatric Medical Examiners.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.830(2)

Hist.: ME 4-1982, f. & ef. 4-23-82; ME 7-1982, f. & ef. 10-27-82; Suspended by ME 3-1983(Temp), f. & ef. 10-3-83 to 10-7-83; Suspended by ME 2-1984(Temp), f. & ef. 1-20-84; ME 11-1985, f. & ef. 8-6-85; ME 6-1986, f. & ef. 4-23-86; ME 8-1994, f. & cert. ef. 4-29-94; BME 16-2004, f. & cert. ef. 7-13-04

847-080-0019

Registration and Continuing Medical Education Requirements

(1) An application for renewal of registration and statutory registration fee shall be submitted to the Board of Medical Examiners and must be received in the Board office during regular business hours on or before December 31 of each odd-numbered year in order for the doctors of podiatric medicine to be renewed for the next 24 months.

(2) Licensed podiatrists shall at the time of submitting their biennial registration fee and as a condition of registration renewal submit to the Board a signed original renewal application showing satisfactory evidence of having completed a minimum of 50 hours of continuing medical education, or 25 hours if licensed during the second year of the biennium.

(3) Upon failure to comply with section (1) and (2) of this rule, the registration shall lapse.

(4) Continuing medical education is acceptable if provided by:

(a) The American Podiatric Medical Association, American Medical Association, or American Osteopathic Association; or

(b) The American Hospital Association; and

(c) Any of the accredited colleges or schools of podiatric medicine within the United States; or

(d) Programs sponsored by any affiliated group to the above organizations, or associations.

(5) The Board shall audit a random sample of podiatrists for compliance with the continuing medical education.

(6) If documentation of the continuing education is improper or inadequate, the podiatrist shall correct the deficiency. Failure to correct the continuing education documentation within 90 days shall constitute grounds for disciplinary action.

(7) Misrepresentation of compliance shall constitute grounds for disciplinary action.

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(8) Documentation supporting compliance with continuing medical education requirements shall be available to the Board upon request during the renewal period and the two year period following the renewal period.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.172

Hist.: ME 10-1991, f. & cert. ef. 7-24-91; ME 8-1994, f. & cert. ef. 4-29-94; ME 14-1994(Temp), f. & cert. ef. 8-10-94; ME 18-1994, f. & cert. ef. 10-25-94; ME 6-1997, f. & cert. ef. 11-3-97; BME 16-2004, f. & cert. ef. 7-13-04

Board of Nursing Chapter 851

Adm. Order No.: BN 11-2004

Filed with Sec. of State: 7-13-2004

Certified to be Effective: 7-13-04

Notice Publication Date: 5-1-04

Rules Amended: 851-061-0020, 851-061-0080, 851-061-0090, 851-061-0110

Subject: 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.

Rules Coordinator: KC Cotton—(503) 731-4754

851-061-0020

Definitions

As used in these rules:

(1) "Board-approved Curriculum" means content required in nursing assistant and medication aide training programs established by Board policy.

(2) "Certified Medication Aide (CMA)" means a Certified Nursing Assistant who has had additional training in administration of noninjectable medication and holds a current unencumbered Oregon CMA certificate.

(3) "Certified Nursing Assistant (CNA)" means a person who holds a current Oregon CNA certificate by meeting the requirements specified in these rules; whose name is listed on the CNA Registry; and who assists licensed nursing personnel in the provision of nursing care. The phrase Certified Nursing Assistant and the acronym CNA are generic and may refer to CNA 1, CNA 2 or all CNAs.

(4) "Certified Nursing Assistant 1 (CNA 1)" means a person who holds a current Oregon CNA certificate and who assists licensed nursing personnel in the provision of nursing care.

(5) "Certified Nursing Assistant 2 (CNA 2)" means a CNA 1 who has met requirements specified in these rules for one or more of the CNA 2 categories.

(6) "Client" means the individual who is provided care by the CNA or CMA including a person who may be referred to as "patient" or "resident" in some settings.

(7) "Clinical Instructor" means a registered nurse whose role is education of students in the skills laboratory or clinical site and who may participate in classroom teaching under the direction of the program director or primary instructor.

(8) "Clinical Preceptor" means a licensed nurse who provides direct clinical supervision of students during their clinical experience under the direction of the program director or a primary instructor.

(9) "Clinical Site" is a location or situation in which hands on experience with actual clients is obtained.

(10) "CNA Registry" means the listing of Oregon Certified Nursing Assistants maintained by the Board.

(11) "Competency evaluation" means the Board approved process for determining competency.

(12) "Criminal History Check" means the Oregon Criminal History Check and when required, a National Criminal History Check and/or a State-Specific Criminal History Check, and processes and procedures equivalent to the Department of Human Services (DHS) rules.

(13) "Direct supervision" means that the registered nurse, clinical nurse specialist, or nurse practitioner is physically present and accessible in the immediate client care area and is available to intervene if necessary.

(14) "Facility-Based Program" means an approved nursing assistant or medication aide training program in a licensed nursing facility.

(15) "Full-time" means at least 32 hours of regularly scheduled work each week.

(16) "Independent Training Program" means an approved nursing assistant or medication aide training program that is not a facility-based program.

(17) "Level 1 training" is the minimum training required to prepare a graduate to take the state certification examination for CNA 1.

(18) "Level 2 training" is training available to a CNA 1 to prepare them for a role in one or more of the Board approved category areas.

(19) "Licensed Nursing Facility" means a licensed nursing home or a Medicare or Medicaid certified long term care facility.

(20) "Medication Pass" means the time spent and the process of preparing and administering time scheduled medications to a group or groups of clients and documenting the medication administration.

(21) "Nursing Assistant" means a person who assists licensed nursing personnel in the provision of nursing care. ORS 678.440(4)

(22) "Program" means a training program that prepares graduates for certification as a nursing assistant level 1, level 2, or medication aide. The terms "nursing assistant program," or "medication aide program" as used in these rules, are synonymous with "Program."

(23) "Representative of the Board" means the Nursing Assistant Program Consultant or Board designee qualified to perform the necessary responsibilities.

(24) "Self-Evaluation" means a review of a basic nursing assistant or medication aide training program conducted by the program director using forms provided by the Board and submitted to the Board.

(25) "Site Visit" means that representative(s) of the Board go to the location of a program for specified purpose(s) which may include a survey for approval.

(26) "Standards for Approval" means authoritative statements which set expectations for a program to achieve and maintain approval status. (OAR 851-061-0080 through 0130).

(27) "Survey Visit" means that representative(s) of the Board go to the location of a program to review the program for compliance with Standards for Approval, and to prepare a report and recommendation regarding approval status.

(28) "Waiver of Prohibition" authorizes a program to be taught in but not by a facility that has had its approval denied or withdrawn pursuant to OAR 851-061-0050(2).

Stat. Auth.: ORS 678.440, 678.442 & 678.444

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04

851-061-0080

Standards for Program Approval: Faculty Qualifications and Responsibilities

(1) The training of nursing assistants level 1 shall be by or under the supervision of a program director or primary instructor who has at least one year of nursing experience in a licensed nursing facility.

(2) The program director shall hold a current, unencumbered license to practice as a registered nurse in Oregon; and

(a) For a nursing assistant level 1 and level 2 training program, have at least three years of nursing experience, including at least one year of working in direct patient care; and one of the following:

- (A) One year of experience on a nursing faculty;
- (B) One year of experience in staff development;
- (C) Evidence of academic preparation for teaching adults; or
- (D) Evidence of equivalent experience.

(b) For a medication aide training program, have at least three years of experience as a Registered Nurse in the last five years, including at least one year as a nurse educator or nurse administrator.

(3) The program director shall:

(a) Act as liaison with the Board related to the program's continuing compliance with the required elements of these rules;

(b) Implement and maintain a program that complies with all Board standards;

(c) Assume the ultimate responsibility for the implementation of the Board-approved curriculum;

(d) Recruit, supervise, and evaluate qualified primary instructors and clinical instructors or preceptors;

(e) Develop and implement written policies necessary for the operation of the program, including those maintained under OAR 851-061-0110(1)(c)(G);

(f) Ensure that all students have initiated a criminal history check prior to entering the program and that all students are eligible pursuant to laws governing the clinical site facility to participate in the program's clinical experiences.

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- (g) Coordinate classroom and clinical sites and activities;
- (h) Ensure that a Board-approved primary instructor, clinical instructor, or clinical preceptor is on the premises at all times during scheduled clinical hours;
- (i) Supervise or coordinate supervision of students in the clinical setting or assign this responsibility to the primary instructor;
- (j) Provide or arrange for the orientation of the clinical instructor or clinical preceptor to their role and responsibilities;
- (k) Assess students' reactions to course content, instructional effectiveness, and other aspects of the learning experience;
- (l) Submit program data upon request of the Board on forms provided by the Board;
- (m) Submit required reports;
- (n) Verify that the training facility in which the training program is offered or utilized for the clinical experience is licensed under the appropriate licensing agency and is in substantial compliance with all standards for licensure;
 - (o) Verify that a facility utilized for out-of-state clinical experience:
 - (A) Has not been found within the preceding two years, by the state survey and certification agency, using the currently applicable Center for Medicare and Medicaid Services regulations, to be categorized as providing substandard quality of care;
 - (B) Is no more than 50 miles from an Oregon border; and
 - (C) Has given permission for site visit(s) by Board staff.
 - (p) For medication aide training programs, determine student eligibility by verifying that the applicant:
 - (A) Holds a current certificate to practice as a CNA 1 on the CNA Registry;
 - (B) Has graduated from an approved basic nurse aide training program at least six months prior to enrollment in the medication aide training program; and
 - (C) Meets the employment requirement of at least six months of full time experience as a nursing assistant or the equivalent in part time experience since graduation from a basic nursing assistant training program unless the applicant is exempt under OAR 851-062-0090.
 - (4) The primary instructor shall hold a current, unencumbered license to practice as a registered nurse in Oregon; and
 - (a) For a nursing assistant level 1 and level 2 training program, have two years experience as a registered nurse and teaching experience or educational preparation for teaching adults.
 - (b) For a medication aide training program, have at least three years of nursing experience in the last five years, to include:
 - (A) One year as a nurse educator, a primary instructor in a nursing assistant training program or as a nurse administrator, and
 - (B) One year working with the particular type of clientele or providing clinical instruction in a setting with the particular type of clientele with whom students will have their clinical experience.
 - (c) May be the director of nursing service in a long term care facility only if there is evidence of formal arrangements for the director of nursing position to be filled by another qualified nurse during the period of instruction.
 - (5) The primary instructor shall:
 - (a) Implement the required Board-approved curriculum;
 - (b) Provide effective teaching strategies in an environment that encourages student and instructor interaction;
 - (c) Supervise and be present in the classroom at least 75% of the time that classes are being taught;
 - (d) Evaluate competency of students; and
 - (e) In addition, for medication aide training programs, the primary instructor shall:
 - (A) Obtain approval from a facility prior to using a facility employee as a clinical preceptor. The facility has the right to refuse such approval;
 - (B) Ensure that each student's clinical experience includes administration of medications by all approved routes of administration and includes administration of a variety of medications; and
 - (C) Supervise the clinical experience for all medication aide students. Clinical preceptors may be used as appropriate.
 - (6) Other personnel from the healthcare professions may supplement the instructor in their area of expertise:
 - (a) For a nursing assistant level 1 and level 2 training program, the program director or primary instructor may:
 - (A) Involve as trainers for a specific portion of the nursing assistant training, other licensed nursing personnel or other licensed health care professionals who have at least one year of experience in their field.
 - (B) Use an approved clinical instructor who shall:

- (i) Hold a current, unencumbered license to practice as a registered nurse in Oregon; and
- (ii) Have the equivalent of one year full time experience as a registered nurse.
 - (C) Use an approved clinical preceptor who shall:
 - (i) Hold a current, unencumbered license to practice nursing in Oregon; and
 - (ii) Have the equivalent of at least one year of experience as a licensed nurse.
 - (b) For a medication aide training program, the clinical preceptor shall:
 - (A) Hold a current, unencumbered license to practice nursing in Oregon;
 - (B) Have the equivalent of one year full time experience as a licensed nurse and shall have three months' nursing experience in the setting in which the medication aide student will be passing medications;
 - (C) Provide direct supervision; and
 - (D) Have only the responsibility for clinical precepting during the scheduled clinical experience.
 - (c) Certified medication aides, resident care managers, and directors of nursing are prohibited from acting as clinical preceptors for medication aide students.
 - Stat. Auth.: ORS 678.440 & 678.444
 - Stats. Implemented: ORS 678.440 & 678.444
 - Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 18-2002, f. & cert. ef. 10-18-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04

851-061-0090

Standards for Program Approval: Curriculum

- (1) Board-approved curriculum shall be used in approved nursing assistant level 1 and medication aide training programs.
- (2) A nursing assistant level 1 training program shall consist of:
 - (a) At least 150 hours of instruction divided into 75 hours of classroom instruction and 75 hours of supervised clinical experience;
 - (b) At least 24 hours of classroom/laboratory instruction with return student demonstrations of learned skills to determine comprehension and competency, in addition to facility orientation, preceding the students' care of clients; and
 - (c) At least 40 hours of clinical experience in a licensed nursing facility, except that pilot programs (OAR 851-061-0030) shall provide clinical experience as approved for pilot status.
- (3) A nursing assistant level 2 training program will have Board approved:
 - (a) Standardized category curriculum that may vary in training hours from other Board approved standardized category curricula; and
 - (b) Competency evaluation.
- (4) Medication aide training program classroom and clinical instruction hours:
 - (a) A medication aide training program shall consist of at least 80 hours of instruction divided into at least 24 hours of classroom instruction and at least 24 hours of 1:1 supervised clinical experience.
 - (b) All clinical hours shall be completed at one site (licensed nursing facility, hospital, or assisted living facility).
 - (c) All required clinical hours shall be in medication administration related activities.
- (5) Admission requirements for medication aide training programs shall be:
 - (a) Current, unencumbered CNA 1 status on the Oregon CNA Registry maintained by the Board;
 - (b) Documentation of graduation from an approved basic nursing assistant level 1 training program at least six months prior to enrollment in the medication aide training program; and
 - (c) Documentation of at least six months full time experience as a nursing assistant level 1 or the equivalent in part time experience since graduation from a basic nursing assistant training program.
- (6) Classroom and clinical faculty/student ratios for nursing assistant level 1 and medication aide training programs:
 - (a) Classroom: The ratio of students per instructor shall be such that each trainee is provided with registered nurse assistance and supervision and be no more than 20 students per instructor for classroom.
 - (b) Clinical:
 - (A) The ratio of students per instructor in a nursing assistant level 1 training program shall be no more than 10 students per instructor at all times during the clinical experience.
 - (B) The ratio of students per instructor in a medication aide training program shall begin with a ratio of one clinical preceptor to one medication

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aide student during the first 24 hours of the clinical experience. Less intensive supervision (either more students per preceptor or less direct supervision by preceptor) may occur with satisfactory evaluation and approval of the clinical preceptor and primary instructor.

(7) Clinical experience and demonstration of competency for nursing assistant level 1 and medication aide training programs:

(a) A clinical schedule shall be prepared for all students prior to the beginning of the clinical experience, and provided to the clinical facility director of nursing, the clinical instructor/preceptor, and the student.

(b) Student practice and demonstration of competency for nursing assistant level 1 and medication aide training programs:

(A) Students may provide direct client care within their authorized duties under the supervision of an approved instructor.

(B) Students shall be identified as students at all times while in the clinical area.

(C) Students must not be counted as staff or utilized as staff during the hours that are scheduled for clinical experience.

(D) Students may be on a unit, floor or wing of a facility only under direct supervision of a qualified instructor.

(E) Students shall not be on a unit, floor, or wing without a CNA or licensed nurse.

(F) Students shall provide care only to the level they have been taught and determined competent by the approved clinical instructor.

(c) In addition, for medication aide training programs, the clinical experience shall consist of a minimum of 10 medication passes to a minimum of five residents/patients during the first 20 hours of supervised clinical experience;

(8) Program completion:

(a) Completion of a nursing assistant level 1 or medication aide training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum;

(B) The student has successfully demonstrated the required skills on the laboratory and clinical skills checklist;

(C) The student has achieved a score of 75% or higher on the program's final examination;

(D) The student has successfully completed the clinical portion of the program no later than four months following the last date of classroom instruction; and

(E) In addition, for nursing assistant level 1 training programs, the student has successfully completed current, adult CPR certification in accordance with Board-approved curriculum.

(b) Completion of a nursing assistant level 2 training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum; and

(B) The student has successfully completed the competency evaluation.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 15-2002, f. & cert. ef. 7-17-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04

851-061-0110

Standards for Program Approval: Records

Nursing assistant level 1, level 2, and medication aide training program records shall:

(1) Be maintained for a period of seven years;

(2) Be maintained in a secure and dry manner;

(3) Include the following program files that are dated and contain:

(a) Faculty name and qualifications;

(b) Curricula, including the teaching methodology;

(c) Course schedules, including classroom and supervised clinical hours;

(d) Laboratory and clinical skill checklists;

(e) Final exams;

(f) Documentation of Board approvals and re-approvals; and

(g) Policies, including but not limited to attendance, behavioral expectations, course requirements, criminal history checks, dress code, and administration of examinations.

(4) Include student records that contain:

(a) Course start date;

(b) Student progress record;

(c) Laboratory and clinical skills checklist;

(d) Attendance record;

(e) Examination scores;

(f) Proof of CPR certification (nursing assistant level 1 training program);

(g) Proof of the criminal history check;

(h) Date of completion; and

(i) Record of student completion:

(A) Facility-based and independent programs shall maintain a copy of the student certificate of completion;

(B) Community College and High School programs may meet this standard by appropriate notation on student transcript.

(j) Date the student was employed (if applicable).

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04

Adm. Order No.: BN 12-2004

Filed with Sec. of State: 7-13-2004

Certified to be Effective: 7-13-04

Notice Publication Date: 5-1-04

Rules Amended: 851-050-0131

Subject: The Board is authorized by ORS 678.385 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. The amendments add the April and May 2004 updates to Drug Facts and Comparisons to the formulary.

Rules Coordinator: KC Cotton—(503) 731-4754

851-050-0131

Formulary for Nurse Practitioners with Prescriptive Authority

(1) The following definitions apply for the purpose of these rules:

(a) "Appliance or device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

(b) "Formulary" means a specific list of drugs determined by the Board. The formulary for nurse practitioners with prescriptive authority shall be all the drugs in the Drug Facts and Comparisons dated May 2004 with the exception of certain drugs and drug groups, which are listed below.

(c) "Board" means the Oregon State Board of Nursing.

(2) The Board as authorized by ORS 678.385 (1993), shall determine the drugs which nurse practitioners may prescribe, shall periodically revise the formulary by rulemaking hearing at each regular Board meeting and shall transmit the list of those drugs which are exceptions to the formulary, and which nurse practitioners may not prescribe, to nurse practitioners with prescriptive authority and other interested parties.

(3) The formulary is constructed based on the following premises:

(a) Nurse practitioners may provide care for specialized client populations within each nurse practitioner category/scope of practice;

(b) Nurse practitioner prescribing is limited by the nurse practitioner's scope of practice and knowledge base within that scope of practice;

(c) Nurse practitioners may prescribe the drugs appropriate for patients within their scope of practice as defined by OAR 851-050-0005;

(d) Nurse practitioners may prescribe drugs for conditions the nurse practitioner does not routinely treat within the scope of their practice provided there is ongoing consultation/ collaboration with another health care provider who has the authority and experience to prescribe the drug(s);

(e) Nurse practitioners shall be held strictly accountable for their prescribing decisions;

(f) All drugs on the formulary shall have Food and Drug Administration (FDA) approval.

(4) Nurse practitioners with prescriptive authority are authorized to prescribe:

(a) All over the counter drugs;

(b) Appliances and devices.

(5) Nurse practitioners are authorized to prescribe the following drugs as listed in Drug Facts and Comparisons dated May 2004:

(a) Nutrients and Nutritional Agents — all drugs;

(b) Hematological Agents — all drugs except Drotrecogin Alfa (Xigris); and Trepstinil Sodium (Romodulin).

(c) Endocrine and Metabolic Agents — all drugs except:

(A) I 131;

(B) Gallium Nitrate; and

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- (C) Mifepristone (Mifeprex); and
- (D) Abarelix (Plenaxis).
- (d) Cardiovasculars — all drugs except:
 - (A) Cardioplegic Solution;
 - (B) Fenoldopam Mesylate (Corlopan);
 - (C) Dofetilide (Tikosyn); and
 - (D) Bosentan (Tracleer).
- (e) Renal and Genitourinary Agents — all drugs;
- (f) Respiratory Agents — all drugs;
- (g) Central Nervous System Agents:
 - (A) Class II Controlled Substances — Only the following drugs:
 - (i) Tincture of opium;
 - (ii) Codeine;
 - (iii) Hydromorphone;
 - (iv) Morphine;
 - (v) Oxycodone, Oxymorphone;
 - (vi) Topical Cocaine Extracts and Compounds;
 - (vii) Fentanyl;
 - (viii) Meperidine;
 - (ix) Amphetamines;
 - (x) Methylphenidates;
 - (xi) Pentobarbital;
 - (xii) Secobarbital;
 - (xiii) Methadone Hydrochloride (in accordance with OAR 851-045-0015(2)(n) and 851-050-0170); and
 - (xiv) Levorphanol.
 - (B) General Anesthetic Agents — no drugs which are general anesthetic barbiturates, volatile liquids or gases, with the exception of nitrous oxide; and
 - (C) Chymopapain is excluded.
 - (h) Gastrointestinal Agents — all drugs except: Monoctanoic;
 - (i) Anti-infectives, Systemic — all drugs;
 - (j) Biological and Immunologic Agents — all drugs except Basiliximab (Simulect);
 - (k) Dermatological Agents — all drugs except Psoralens;
 - (l) Ophthalmic and Otic Agents — all drugs except:
 - (A) Punctal plugs;
 - (B) Collagen Implants;
 - (C) Indocyanine Green;
 - (D) Hydroxypropyl (Methyl) Cellulose;
 - (E) Polydimethylsiloxane;
 - (F) Fomivirsen Sodium (Vitravene);
 - (G) Verteporfin;
 - (H) Levobetaxolol HCL (Betaxon);
 - (I) Travoprost (Travatan);
 - (J) Bimatoprost (Lumigan); and
 - (K) Unoprostone Isopropyl (Rescula).
 - (m) Antineoplastic Agents — all drugs except:
 - (A) NCI Investigational Agents;
 - (B) Samarium Sm53;
 - (C) Denileukin Diftitox (Ontak);
 - (D) BCG, Intravesical (Pacis);
 - (E) Arsenic Trioxide (Trisenox);
 - (F) Ibritumomab Tiuxetan (Zevalin);
 - (G) Tositumomab and Iodine 131 I-Tositumomab (Bexxar); and
 - (H) Sclerosol.
 - (n) Diagnostic Aids:
 - (A) All drugs except Arbutamine (GenESA);
 - (B) Thyrotropin Alfa (Thyrogen);
 - (C) Miscellaneous Radiopaque agents — no drugs from this category

except:

- (i) Iopamidol;
- (ii) Iohexol; and
- (iii) Ioxilan (Oxilan).

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

Stat. Auth.: ORS 678.375 & 678.385

Stats. Implemented: ORS 678.385

Hist.: NB 11-1993(Temp), f. 10-26-93, cert. ef. 11-4-93; NB 2-1994, f. & cert. ef. 4-15-94; NB 7-1994, f. & cert. ef. 9-28-94; NB 3-1995, f. & cert. ef. 4-12-95; NB 6-1995(Temp), f. & cert. ef. 6-15-95; NB 8-1995, f. & cert. ef. 6-29-95; NB 11-1995, f. & cert. ef. 10-9-95; NB 1-1996, f. & cert. ef. 2-29-96; NB 3-1996, f. & cert. ef. 6-11-96; NB 8-1996, f. & cert. ef. 10-30-96; NB 10-1996, f. & cert. ef. 12-2-96; NB 5-1997, f. & cert. ef. 3-6-97; NB 7-1997, f. & cert. ef. 5-13-97; NB 8-1997, f. & cert. ef. 7-1-97; NB 13-1997, f. & cert. ef. 9-29-97; NB 14-1997, f. & cert. ef. 12-11-97; NB 4-1998, f. & cert. ef. 3-13-98; NB 5-1998, f. & cert. ef. 5-11-98; NB 8-1998, f. & cert. ef. 7-16-98; NB 12-1998, f. & cert. ef. 9-22-98; NB 13-1998, f. & cert. ef. 12-1-98; NB 1-1999, f. & cert. ef. 3-4-99; NB 3-1999, f. & cert. ef. 5-4-99; NB 5-1999, f. & cert. ef. 7-1-99; NB 9-1999, f. & cert. ef. 10-20-99; NB 13-1999, f. & cert. ef. 12-1-99; NB 3-2000, f. & cert. ef. 2-25-00; NB 5-2000, f. & cert. ef. 4-24-00; NB 8-2000, f. & cert. ef. 7-3-00; NB 9-2000, f. & cert. ef. 9-18-00; NB 10-2000, f. & cert. ef. 12-15-00;

BN 2-2001, f. & cert. ef. 2-21-01; BN 6-2001, f. & cert. ef. 4-24-01; BN 9-2001, f. & cert. ef. 7-9-01; BN 13-2001, f. & cert. ef. 10-16-01; BN 4-2002, f. & cert. ef. 3-5-02; BN 11-2002, f. & cert. ef. 4-25-02; BN 14-2002, f. & cert. ef. 7-17-02; BN 19-2002, f. & cert. ef. 10-18-02; BN 21-2002, f. & cert. ef. 12-17-02; BN 2-2003, f. & cert. ef. 3-6-03; BN 4-2003, f. & cert. ef. 4-23-03; BN 8-2003, f. & cert. ef. 7-7-03; BN 10-2003, f. & cert. ef. 10-2-03; BN 13-2003, f. & cert. ef. 12-9-03; BN 6-2004, f. & cert. ef. 2-26-04; BN 10-2004, f. & cert. ef. 5-4-04; BN 12-2004, f. & cert. ef. 7-13-04

Bureau of Labor and Industries Chapter 839

Adm. Order No.: BLI 5-2004

Filed with Sec. of State: 6-23-2004

Certified to be Effective: 6-24-04

Notice Publication Date:

Rules Amended: 839-016-0750

Subject: The rule adopts prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for specified residential projects for the dates specified.

Rules Coordinator: Marcia Ohlemiller—(503) 731-4212

839-016-0750

Residential Prevailing Wage Rate Determinations

(1) Pursuant to ORS 279.359, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in the following residential rate determination(s) are the prevailing rates of wage for workers upon said public works project(s) for the period(s) of time specified:

(a) *Special Prevailing Wage Rate Determination for Residential Project, Madrone Street Affordable Housing, Project #2004-01* dated April 22, 2004 for the period May 1, 2004 through June 30, 2005.

(b) *Special Prevailing Wage Rate Determination for Residential Project, City Center Apartments, Project #2004-02*, dated April 22, 2004, for the period of May 1, 2004 through March 31, 2005.

(c) *Special Prevailing Wage Rate Determination for Residential Project, Sagewind Manor, Project #2004-03*, dated May 20, 2004, for the period of May 24, 2004 through June 30, 2005.

(d) *Special Prevailing Wage Rate Determination for Residential Project, Lakewood Commons, Project #2004-04*, dated June 22, 2004 for the period of June 24, 2004 through June 30, 2005.

(2) Copies of the rates referenced in section (1) of this rule 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 listed in the blue pages of the phone book. Copies may also 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) 731-4709.

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

Stat. Auth.: ORS 279.359

Stats. Implemented: ORS 279.359

Hist.: BLI 5-1999, f. 6-30-99, cert. ef. 7-1-99; BLI 7-1999, f. 8-26-99, cert. ef. 9-15-99; BLI 8-1999, f. & cert. ef. 9-8-99; BLI 10-1999, f. 9-14-99, cert. ef. 9-17-99; BLI 11-1999, f. 9-22-99, cert. ef. 9-27-99; BLI 6-2000, f. 2-14-00, cert. ef. 2-15-00; BLI 12-2000, f. 5-24-00, cert. ef. 7-1-00; BLI 18-2000, f. & cert. ef. 9-1-00; BLI 21-2000, f. 9-15-00, cert. ef. 9-22-00; BLI 23-2000, f. & cert. ef. 9-25-00; BLI 24-2000, f. 10-30-00, cert. ef. 11-1-00; BLI 2-2001, f. & cert. ef. 1-24-01; BLI 6-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 7-2001, f. 7-20-01, cert. ef. 7-24-01; BLI 9-2001, f. 7-31-01, cert. ef. 8-1-01; BLI 10-2001, f. 8-14-01, cert. ef. 8-15-01; BLI 11-2001, f. & cert. ef. 8-22-01; BLI 13-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 6-2002, f. 3-14-02, cert. ef. 3-15-02; BLI 7-2002, f. 3-22-02, cert. ef. 3-25-02; BLI 11-2002, f. & cert. ef. 5-23-02; BLI 13-2002, f. 6-26-02 cert. ef. 7-1-02; BLI 14-2002, f. 8-23-02, cert. ef. 10-1-02; BLI 2-2003, f. & cert. ef. 3-28-03; BLI 2-2004, f. 4-23-04, cert. ef. 5-1-04; BLI 3-2004, f. 5-18-04, cert. ef. 5-19-04; BLI 4-2004, f. & cert. ef. 5-24-04; BLI 5-2004, f. 6-23-04, cert. ef. 6-24-04

Adm. Order No.: BLI 6-2004

Filed with Sec. of State: 6-25-2004

Certified to be Effective: 7-1-04

Notice Publication Date:

Rules Amended: 839-016-0700

Subject: The rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning July 1, 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 publi-

ADMINISTRATIVE RULES

cation of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts* in Oregon dated July 1, 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 July 1, 2004, and the effective date of the applicable special wage determination:

(a) Marine Rates for Public Works Contracts in Oregon (effective January 18, 2002).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts* in Oregon dated July 1, 2004, and special wage determination is 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 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; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04

Adm. Order No.: BLI 7-2004

Filed with Sec. of State: 7-14-2004

Certified to be Effective: 7-15-04

Notice Publication Date:

Rules Amended: 839-016-0750

Subject: The rule adopts prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for specified residential projects for the dates specified.

Rules Coordinator: Marcia Ohlemiller—(503) 731-4212

839-016-0750

Residential Prevailing Wage Rate Determinations

(1) Pursuant to ORS 279.359, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in the following residential rate determination(s) are the prevailing rates of wage for workers upon said public works project(s) for the period(s) of time specified:

(a) *Special Prevailing Wage Rate Determination for Residential Project, Madrone Street Affordable Housing, Project #2004-01* dated April 22, 2004 for the period May 1, 2004 through June 30, 2005.

(b) *Special Prevailing Wage Rate Determination for Residential Project, City Center Apartments, Project #2004-02*, dated April 22, 2004, for the period of May 1, 2004 through March 31, 2005.

(c) *Special Prevailing Wage Rate Determination for Residential Project, Sagewind Manor, Project #2004-03*, dated May 20, 2004, for the period of May 24, 2004 through June 30, 2005.

(d) *Special Prevailing Wage Rate Determination for Residential Project, Lakeview Commons, Project #2004-04*, dated June 22, 2004 for the period of June 24, 2004 through June 30, 2005.

(e) *Special Prevailing Wage Rate Determination for Residential Project, Hampden Lane, Project #2004-05*, dated July 13, 2004 for the period of July 15, 2004 through June 30, 2005.

(2) Copies of the rates referenced in section (1) of this rule 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 listed in the blue pages of the phone book. Copies may also 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) 731-4709.

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

Stat. Auth.: ORS 279.359

Stats. Implemented: ORS 279.359

Hist.: BLI 5-1999, f. 6-30-99, cert. ef. 7-1-99; BLI 7-1999, f. 8-26-99, cert. ef. 9-15-99; BLI 8-1999, f. & cert. ef. 9-8-99; BLI 10-1999, f. 9-14-99, cert. ef. 9-17-99; BLI 11-1999, f. 9-22-99, cert. ef. 9-27-99; BLI 6-2000, f. 2-14-00, cert. ef. 2-15-00; BLI 12-2000, f. 5-24-00, cert. ef. 7-1-00; BLI 18-2000, f. & cert. ef. 9-1-00; BLI 21-2000, f. 9-15-00, cert. ef. 9-22-00; BLI 23-2000, f. & cert. ef. 9-25-00; BLI 24-2000, f. 10-30-00, cert. ef. 11-1-00; BLI 2-

2001, f. & cert. ef. 1-24-01; BLI 6-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 7-2001, f. 7-20-01, cert. ef. 7-24-01; BLI 9-2001, f. 7-31-01, cert. ef. 8-1-01; BLI 10-2001, f. 8-14-01, cert. ef. 8-15-01; BLI 11-2001, f. & cert. ef. 8-22-01; BLI 13-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 6-2002, f. 3-14-02, cert. ef. 3-15-02; BLI 7-2002, f. 3-22-02, cert. ef. 3-25-02; BLI 11-2002, f. & cert. ef. 5-23-02; BLI 13-2002, f. 6-26-02 cert. ef. 7-1-02; BLI 14-2002, f. 8-23-02, cert. ef. 10-1-02; BLI 2-2003, f. & cert. ef. 3-28-03; BLI 2-2004, f. 4-23-04, cert. ef. 5-1-04; BLI 3-2004, f. 5-18-04, cert. ef. 5-19-04; BLI 4-2004, f. & cert. ef. 5-24-04; BLI 5-2004, f. 6-23-04, cert. ef. 6-24-04; BLI 7-2004, f. 7-14-04, cert. ef. 7-15-04

Construction Contractors Board Chapter 812

Adm. Order No.: CCB 6-2004

Filed with Sec. of State: 6-25-2004

Certified to be Effective: 9-1-04

Notice Publication Date: 6-1-04

Rules Amended: 812-003-0000, 812-003-0025, 812-003-0050, 812-004-0600, 812-005-0005

Subject: OAR 812-003-0000 is amended to eliminate the late fee requirement contained in 812-003-0000(11) and renumbering. The reasons that the late fee was originally established no longer apply. Charging the late fee often requires the agency to send letters to licensees requesting the additional funds; approximately 170 letters a month. The Customer Service Unit receives calls requesting the late fee be waived or the caller is angry about the fee; these calls average between 15 to 30 minutes each. It is believed that the elimination of this fee will improve service and reduce cost to CCB licensees.

OAR 812-003-0025, 812-003-0050, 812-004-0600, and 812-005-0005 are amended to remove the reference to the late fee.

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

812-003-0000

Licensing Generally

(1) A license and its identifying license number will be issued to one entity only. Other entities shall not be included in that license, but each shall be separately licensed and shall separately meet the licensing requirements. No entity may perform work subject to ORS Chapter 701 through the use of another entity's license.

(2) The Board adopts the form "Independent Contractor Certification Statement" as approved October 24, 1989, as required by ORS 701.075(3).

(3) If an entity licensed as a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or joint venture seeks to change to another entity, the former license may be terminated. The new entity must license anew.

(4) All partners within a partnership shall be on record with the Construction Contractors Board. Partnerships consisting of spouses shall be treated the same as partnerships consisting of unrelated persons. License becomes invalid upon any change in the composition of that partnership.

(5) Each entity shall:

(a) List on its license application or renewal all assumed business names under which business as a contractor is conducted. All assumed business names listed shall be on record with the Corporation Division; and

(b) Provide evidence to the agency that the applicant's responsible managing individual has completed the education required by ORS 701.280 as governed by Division 6 of these rules.

(c) List on its license application or renewal the Standard Industrial Classification (SIC) code number of its main construction activities.

(6)(a) A license card is valid for the term for which it is issued only if the following conditions are met throughout the license period:

(A) The surety bond remains in effect and undiminished by payment of Construction Contractors Board final orders; and

(B) The insurance required by ORS 701.105 remains in effect; and

(C) If the licensee is a sole proprietorship, survival of the sole proprietorship; or

(D) If the licensee is a partnership or limited liability partnership, no change in the composition of that partnership, by death or otherwise; or

(E) If the licensee is a corporation or limited liability company, survival of that corporation or limited liability company, including compliance with all applicable laws governing corporations or limited liability companies.

(b) If the licensee's bond is cancelled, the license will lapse 30 days from the date the cancellation is received by the agency.

(c) An entity whose license has lapsed is considered unlicensed from the date the lapse occurred until the date the license is backdated and

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renewed, reissued, or reinstated. During a period of lapse, the entity shall not perform the work of a contractor.

(d) A period of lapse will end and the license previously issued will again become valid on the date upon which the agency receives the missing items that caused the lapse. This includes but is not limited to a new bond or a notice of reinstatement for the existing bond or on the effective date of a backdated bond or backdated reinstatement for the existing bond.

(e) If a license becomes invalid, the agency may require the return of the license and pocket card(s).

(7) No person shall advertise or otherwise hold out to the public that person's services as a contractor unless that person holds a current, valid license, nor shall any person claim by advertising or by any other means to be licensed, bonded, insured, or licensed unless that person holds a current, valid license.

(8) License number in advertising and contracts:

(a) All newsprint classified advertising and newsprint display advertising for work subject to ORS Chapter 701 prepared by a contractor or at the contractor's request or direction, shall show the contractor's license number.

(b) All written bids, written inspection reports and building contracts subject to ORS Chapter 701 shall show the contractor's license number.

(c) All telephone directory space ads and display ads shall show the contractor's license number.

(d) Except as set forth in sub paragraph (e) all business cards, business letterhead, business signs at construction sites, all advertising, shall show the contractor's license number. This rule is effective upon filing for all contractors filing for new license, and is effective for all existing contractors when they purchase new business cards, business letterhead, and business signs for construction sites, or January 1, 1998, whichever date occurs sooner.

(e) Sub paragraph (d) does not apply to a company whose primary business is other than construction and has a Standard Industrial Classification (SIC) code from other than Major Groups 15, 16, and 17.

(9) The initial two-year license fee for all license applications received on or after July 1, 2004 is \$295 for all categories

(10) The two-year renewal fee for all license renewals with a renewal date of July 1, 2004, and after and all other license renewal applications received by the agency on or after July 1, 2004 is \$295 for all categories.

(11) A person licensed as a General Contractor — All-Structures may also perform the work of a Specialty Contractor — All-Structures. A person licensed as a General Contractor — Residential-Only may also perform the work of a Specialty Contractor — Residential-Only.

(12) A Limited Contractor may perform Specialty Contractor, General Contractor, residential, small commercial and large commercial construction work, so long as all of the following conditions are met:

(a) The licensee's annual gross business sales do not exceed \$40,000;

(b) The licensee does not enter into a contract in which the contract price exceeds \$5,000;

(c) If the contract price in a contract for work performed by the licensee is based on time and materials, the amount charged by the licensee shall not exceed \$5,000;

(d) The licensee consents to inspection by the Construction Contractors Board of its Oregon Department of Revenue tax records to verify compliance with subsection (a).

(e) For purposes of this section, "contract" includes a series of agreements between the licensee and a person for work on any single work site within a one-year period.

(13) An Inspector may perform inspections, but may not construct, alter, repair, add to, subtract from, improve, move, wreck or demolish for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or do any part thereof, or act as a contractor performing construction management on a project that involves any of these activities.

(14) The following surety bond amounts are required:

(a) For those applicants applying for a new license or reissue prior to July 1, 1999, and for those applicants applying for renewal prior to August 1, 1999, the bond amount required is as follows:

(A) General Contractor — All Structures — \$10,000

(B) General Contractor — Residential — \$10,000

(C) Specialty Contractor — All Structures — \$5,000

(D) Specialty Contractor — Residential — \$5,000

(E) Limited Contractor — \$2,000

(b) As required by ORS 701.085 as amended by chapter 325, 1999 Session Laws, for those applicants applying for a new license or reissue on or after July 1, 1999, and for those applicants applying for renewal on or

after August 1, 1999, or with an expiration date of August 1, 1999, or later the bond amount required is as follows:

(A) General Contractor — All Structures — \$15,000

(B) General Contractor — Residential — \$15,000

(C) Specialty Contractor — All Structures — \$10,000

(D) Specialty Contractor — Residential — \$10,000

(E) Limited Contractor — \$5,000

(F) Inspector — \$10,000

(G) Licensed Developer — \$15,000

(c) A contractor may obtain or maintain a bond in an amount that exceeds the amount required under subsection (b) of this section if the bond obtained or maintained is in an amount that is equal to an amount required under subsection (b) of this section.

(15) The following general liability insurance amounts are required:

(a) For those applicants applying for a new license or reissue prior to July 1, 1999, and for those applicants applying for renewal prior to August 1, 1999, the following general liability insurance amount is required as follows:

(A) General Contractor — All Structures — \$500,000

(B) General Contractor — Residential — \$100,000

(C) Specialty Contractor — All Structures — \$500,000

(D) Specialty Contractor — Residential — \$100,000

(E) Limited Contractor — \$100,000

(b) As required by ORS 701.105, for those applicants applying for a new license or reissue on or after July 1, 1999, and for those applicants applying for renewal on or after August 1, 1999, or with an expiration date of August 1, 1999, or later the following general liability insurance amount is required as follows:

(A) General Contractor — All Structures — \$500,000

(B) General Contractor — Residential — \$500,000

(C) Specialty Contractor — All Structures — \$500,000

(D) Specialty Contractor — Residential — \$300,000

(E) Limited Contractor — \$100,000

(F) Inspector — \$300,000

(G) Licensed Developer — \$500,000

(16) A fee of \$20 shall be charged for any changed license category.

(17) On all construction projects regulated under the state Prevailing Wage Law, ORS 279.348 to 279.365 or the Davis Bacon Act and related acts, 40 USC 276a, the primary contractor shall provide the list of subcontractors required by ORS 701.055(11) to the contracting public agency and to the Wage and Hour Division of the Bureau of Labor and Industries, 800 NE Oregon #32, Portland, OR 97232.

(a) The initial list of subcontractors will be submitted to the contracting public agency and to the Wage and Hour Division of the Bureau of Labor and Industries on the same date that the initial Payroll and Certified Statement form (WH-38) is due. Instructions for submitting form WH-38 are contained in OAR 839-016-0010.

(b) The primary contractor will prepare and submit updated lists of subcontractors with each submittal of the Payroll and Certified Statement form (WH-38).

(18) A contractor shall not engage in dishonest or fraudulent conduct injurious to the welfare of the public.

(19) A contractor shall cooperate fully with any investigation undertaken by the Board pursuant to ORS 701.225.

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

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

Stat. Implemented: ORS 701.055, 701.075, 701.102, 701.125 & 701.280

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 3-1980(Temp), f. 6-2-80, ef. 7-1-80; 1BB 4-1980, f. & ef. 7-14-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 2-1982, f. 4-1-82, ef. 7-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0010; 1BB 2-1983, f. & ef. 7-6-83; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; BB 1-1987, f. & ef. 3-5-87; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 2-1989, f. 6-29-89, cert. ef. 7-1-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 8-1992(Temp), f. & cert. ef. 12-4-92; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 4-1996, f. 11-7-96, cert. ef. 11-8-96; CCB 5-1996, f. 11-25-96, cert. ef. 11-27-96; CCB 7-1996, f. & cert. ef. 12-11-96; CCB 2-1997, f. 7-7-97, cert. ef. 7-8-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2002(Temp), f. & cert. ef. 5-23-02 thru 11-19-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 5-2003, f. 6-3-03, cert. ef. 10-1-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 8-2003, f. 8-8-03, cert. ef. 1-1-04; CCB 9-2003, f. 9-29-03, cert. ef. 1-1-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 3-2004, f. 2-27-04, cert. ef. 7-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04

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812-003-0025

Renewal and Reissue of License

(1) A license may be renewed or reissued upon:

- (a) The applicant's completion of the renewal form or application form prescribed by the agency; and
- (b) Payment of the fee or fees, and
- (c) Receipt of the required certification of insurance coverage, and
- (d) A non-cancelled bond on file. If it appears to the agency that the required surety bond has been cancelled, the applicant shall submit a reinstatement from the surety on the cancelled bond or a new, original, continuous until cancelled surety bond.

(2) Licensees shall submit a signed acknowledgment that if the licensee qualifies as an independent contractor the licensee understands that the licensee and any heirs of the licensee will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the licensee's insurance coverage and that the licensee's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the licensee.

(3) A licensee may qualify for Limited Contractor license and reduce the bond to \$5,000 upon certification that the licensee will not enter into contracts that exceed \$5,000, that the licensee's gross business sales of work subject to ORS chapter 701 was less than \$40,000 in the previous twelve months, is expected to be less than \$40,000 during the next twelve months, and that the licensee agrees that if the licensee's gross construction business volume exceeds \$40,000 during the coming year the licensee will immediately increase the bond amount to \$10,000 or \$15,000, and increase the insurance coverage if necessary, to meet the requirements of the appropriate license category. The reduced bond may be accomplished by submission of a decrease rider to an existing bond or the submission of a new bond. The effective date on either the decrease rider or the new bond must be the license renewal date or after. In addition, the agency may refuse to authorize a reduced amount until any pending claim(s) against the licensee are resolved.

(4) If a licensee provides a decrease rider to an existing bond in accordance with this rule prior to the license renewal date, the agency will determine the effective date to be the date of renewal or reissue.

(5) The effective date of renewal shall be the previous license expiration date when:

(a) All requirements for renewal are met prior to the previous license expiration date; or

(b) All requirements for renewal, including submission of either a valid continuous until canceled bond or back-dated new bond, certification of insurance coverage, and payment of renewal fee are met, providing the contractor applies for renewal not more than one year after the license lapses.

(6) If the contractor applies for renewal more than one year after the license lapses, the effective date of reissue shall be the date all requirements for licensing, including, but not limited to, submission of a newly issued continuous until canceled bond or reinstatement of an existing continuous until canceled bond, certification of insurance coverage and payment of new license fee.

(7) For liens perfected and claims commenced on or after January 1, 1998:

(a) The time period under ORS 701.065(2)(a)(A) and ORS 701.065(2)(c)(B) (2003 Laws) for a completed application for license to be submitted to the Board is 90 calendar days from the date the contractor became aware of the requirement that the contractor be licensed;

(b) The time period under ORS 701.065(2)(b)(A) for a completed application for license renewal to be submitted to the Board is 90 calendar days from the date the contractor became aware of a lapse in license.

Stat. Auth.: ORS 670.310, 701.235, 701.280, 701.992 & 183.310 - 183.500
Stats. Implemented: ORS 701.065, 701.102 & 701.115

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 3-1980(Temp), f. 6-2-80, ef. 7-1-80; 1BB 4-1980, f. & ef. 7-14-80; 1BB 5-1980, f. & ef. 10-7-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0035; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 4-1984, f. & ef. 8-16-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 2-1989, f. 6-29-89, cert. ef. 7-1-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 4-1995, f. & cert. ef. 10-5-96; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-1999, f. 9-10-99, cert. ef. 11-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 10-2003(Temp), f. 9-29-03, cert. ef. 10-1-03 thru 3-27-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04

812-003-0050

Inactive Status

(1) A licensee may not convert a license to an inactive status if the licensee is engaged in work as a contractor.

(2) A licensee may not offer to undertake work, advertise work as a contractor, submit a bid for construction work, obtain a building permit or perform construction work while in an inactive status.

(3) A licensee shall notify the agency of any change of address while in an inactive status. During the period when the status of a license is inactive, the agency shall send notices and any other communications to the licensee at the last known address of record of the licensee.

(4) To convert to an inactive status:

(a) A licensee must have a current active license or a license that lapsed no more than two years prior to the application for inactive status;

(b) If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline;

(c) The licensee must submit a request to convert to inactive status on forms provided by the agency; and

(d) The licensee must comply with section (5), (7) or (9) as applicable.

(5) A request to convert a license to inactive status made at the time of renewal of the license must be accompanied by fees required under OAR 812-003-0000(10).

(6) If a license is converted to inactive status at the time of renewal of the license, the effective date of the renewed license shall be the expiration date of the previous license. The renewed license shall expire two or four years after its effective date, at the discretion of the licensee.

(7) A request to convert a license to inactive status made prior to the expiration date of the license but at a time other than the time of renewal of the license will be accepted only if the licensee making the request has paid all applicable fees required under OAR 812-003-0000(10) and OAR 812-001-0015(7)(d).

(8) If a license is converted to inactive status prior to the expiration date of the license but at a time other than the time of renewal of the license, the effective dates of the license will remain unchanged and the license will expire at the upcoming expiration date.

(9) A request to renew a license and convert it to inactive status made after a lapse due to the expiration of the license must be accompanied by:

(a) Fees required under OAR 812-003-0000(10), if the lapse is less than or equal to one year in duration; or

(b) Fees required under OAR 812-003-0000(9) if the lapse is more than one year in duration.

(10) If a license is renewed and converted to inactive status after a lapse due to expiration of the license, the agency will establish the effective date of the license. The renewed license shall expire two or four years after its effective date, at the discretion of the licensee.

(11) To renew an inactive license in an inactive status:

(a) If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline;

(b) The licensee must submit the request to renew the license in inactive status on forms provided by the agency; and

(c) The licensee must submit the fees required under OAR 812-003-0000(10).

(12) To convert from an inactive status back to an active status, the licensee must:

(a) Submit a request to convert to an active status on forms provided by the agency; and

(b) Comply with section (13), (14) or (15) as applicable.

(13) A licensee requesting conversion from an inactive status to an active status at the time of renewal must:

(a) Submit the fees required under OAR 812-003-0000(10);

(b) Submit the required surety bond and general liability insurance for the category requested; and

(c) Comply with all other licensing requirements prescribed by the Board.

(14) A licensee requesting conversion from an inactive status to an active status at a time other than renewal and prior to the expiration date of the license must:

(a) Submit all fees to date as required by OAR 812-003-0000(10) and 812-001-0015(7)(d);

(b) Submit the required surety bond and general liability insurance for the category requested; and

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& cert. ef. 5-23-02 thru 11-19-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04

(d) Comply with all other licensing requirements prescribed by the Board.

(15) A licensee requesting conversion from an inactive status to an active status during a lapse due to the expiration of the license must:

- (a) Request the conversion within two years from the date of lapse;
- (b) Comply with all licensing requirements prescribed by the Board;
- (c) Submit the required surety bond and general liability insurance for the category requested; and
- (d) Submit all fees required under:
 - (A) OAR 812-003-0000(10) if the lapse is one year or less; or
 - (B) OAR 812-003-0000(9) if the lapse is more than one year.

(16) If a license is converted from an inactive to an active status, the agency shall establish the effective date of the license.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.115

Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 9-2001, f. 12-13-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04

812-004-0600

Payment from Surety Bonds

(1) The agency may notify the surety company of claims pending.

(2) The agency shall notify the surety company of claims ready for payment. This notice shall constitute notice that payment is due on the claim. Claims are ready for payment when all of the following have occurred:

(a) An arbitration award has been issued and is ready for payment under OAR 812-010-0440 after 30 days have elapsed to allow the respondent time to pay the award or file exceptions with the circuit court or a final order has been issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order;

(b) The agency has received no evidence that the respondent has complied with the award or final order;

(c) The agency has not granted a stay of enforcement of the final order pending judicial review by the Court of Appeals; and

(d) All other claims filed against the respondent within the same 90-day filing period under ORS 701.150 have either been resolved, been closed or have reached the same state of processing as the subject claim.

(3) Claims related to a job that are satisfied from a surety bond shall be paid as follows:

(a) If a surety bond was in effect when the work period began, payment shall be made from that surety bond.

(b) If no surety bond was in effect when the work period began, but a surety bond subsequently became effective during the work period of the contract, payment shall be made from the first surety bond to become effective after the beginning of the work period.

(c) A surety bond that is liable for a claim under subsection (a) or (b) of this section is liable for all claims related to the job and subsequent surety bonds have no liability for any claim related to the job.

(4) If during a work period the amount of a surety bond is changed and a claim is filed relating to work performed during that work period, the claimant may recover from the surety bond up to the amount in effect at the time the contract was entered into.

(5) The full penal sum of the bond shall be available to pay claims under this rule, notwithstanding that the penal sum may exceed the bond amount required under OAR 812-003-0000(14).

(6) Unless the order provides otherwise, if an award or a final order provides that two or more respondents are jointly and severally liable for an amount due to a claimant and payment is due from the surety bonds of the respondents, payment shall be made in equal amounts from each bond subject to payment. If one or more of the bonds is or becomes exhausted, payment shall be made from the remaining bond or in equal amounts from the remaining bonds. If one of the respondents liable on the claim makes payment on the claim, that payment shall reduce the payments required from that respondent's bond under this section by an amount equal to the payment made by the respondent.

(7) A surety company may not condition payment of a claim on the execution of a release by claimant.

(8) Inactive status of the license of the respondent does not excuse payment by a surety company required under this rule.

Stat. Auth.: ORS 670.310, 701.150 & 701.235

Stats. Implemented: ORS 701.150

Hist.: IBB 6-1980, f. & ef. 11-4-80; IBB 3-1981, f. 10-30-81, ef. 11-1-81; IBB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0075; IBB 6-1984(Temp), f. & ef. 9-18-84; IBB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0070; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2002(Temp), f.

812-005-0005

Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and section 812-003-0000(7), which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and section 812-003-0000(7), when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.055(1) when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) \$500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.055(11); and

(7) \$1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0000(8): First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0000(5): First offense \$50, second offense \$100, subsequent offenses \$200.

(11) Failure to use a written contract as required by ORS 701.055(14), \$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000.

(12) Violation of ORS 701.055(13), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

(13) Failure to conform to information provided on the application in violation of ORS 701.075(2), issuance of a \$1,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application.

(a) If the violator is a limited contractor working in violation of the conditions established pursuant to OAR 812-003-0000(12), the licensee shall be permanently barred from licensure in the Limited Contractor category.

(b) If the violator is a licensed developer working in violation of the conditions established pursuant to ORS 701.005(7), the licensee shall be permanently barred from licensure in the Licensed Developer category.

(14) Knowingly assisting an unlicensed contractor to act in violation of ORS Chapter 701, \$1,000.

(15) Failure to comply with any part of ORS Chapters 316, 656, or 657, 701.035 or 701.075, as authorized by ORS 701.100, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(16) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

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(17) Working without a construction permit in violation of ORS 701.135, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(18) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(19) Violation of ORS 701.135(1)(L) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(20) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

- (a) Not paying prevailing wage on a public works job; or
- (b) Violating the federal Davis-Bacon Act; or
- (c) Failing to pay minimum wages or overtime wages as required under state and federal law; or

(d) Failing to comply with the payroll certification requirements of ORS 279.354; or

(e) Failing to comply with the posting requirements of ORS 279.350: \$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(21) Violation of ORS 701.135(1)(L) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(22) When, as set forth in ORS 701.135(1)(h), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(23) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(24) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(25) Failure to conform to the Standards of Practice in violation of OAR 812-008-0080(1)-(14): \$750 per offense.

(26) Failure to conform to the Standards of Behavior in OAR 812-008-0080(15)(b)-(h): \$750 per offense.

(27) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(28) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0080(1)(d): \$400 per offense.

(29) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070: \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(30) Violation of ORS 279.323:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(31) Violation of ORS 701.175, inclusion of provisions in a contract that preclude a homeowner from filing a claim with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

Stat. Auth.: ORS 183.310 - 183.500, 670.310, 701.235, 701.280 & 701.992
Stats. Implemented: ORS 701.135, 701.175, 701.227, 701.992, & 279.323

Hist.: 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1985, f. & ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87; BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef. 11-13-00 thru 5-11-01; CCB 2-2001 f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02, cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04

Department of Administrative Services Chapter 125

Adm. Order No.: DAS 3-2004

Filed with Sec. of State: 7-15-2004

Certified to be Effective: 9-1-04

Notice Publication Date: 8-1-04

Rules Adopted: 125-125-0050, 125-125-0100, 125-125-0150, 125-125-0200, 125-125-0250, 125-125-0300, 125-125-0350, 125-125-0400, 125-125-0450

Subject: Establish a procedure for statewide facilities reporting and incorporate the functions of the Capitol Planning Commission into the Capitol Projects Advisory Board structure while the CPC rules are suspended through 6/05.

Rules Coordinator: Kristin Keith—(503) 378-2349, ext. 325

125-125-0050

Purpose, Application, and Authority

These rules are adopted under ORS 276.227. They set forth the statewide facility planning process for state agencies and the duties of the Board, which assists the Department with the planning process. State agencies other than institutions of higher education are required to provide information about their facilities and projects to the Department. Additionally, for the period between July 1, 2003 and June 30, 2005, they implement a planning and review process for facilities and projects within the area described in ORS 276.010.

Stat Auth: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04

125-125-0100

Definitions

As used in these rules, the following terms have the meanings indicated, unless the context requires otherwise:

(1) "Area Plan" means a plan for development in one of the specified geographical areas described in ORS 276.010.

(2) "Building Maintenance Plan" means a plan to be completed by an agency that owns a building of 10,000 or more square feet.

(3) "Board" means the Capitol Projects Advisory Board appointed under ORS 276.227(3), which is advisory to the Director of the Department.

(4) "Committee" means the Capitol Mall Project Review Committee, which reviews projects on the Capitol Mall for compliance with the Capitol Mall Area Plan standards and policy.

(5) "Department" means the Department of Administrative Services.

(6) "Director" means the Director of the Department of Administrative Services.

(7) "Statewide Program" means a program of the Facilities Division of the Department of Administrative Services that implements OAR 125-125-0050 to 125-125-0450.

(8) "Project Plan" means a plan to be completed for each major capital construction project of \$500,000 or more that a state agency is anticipating within the next three biennia.

(9) "Space Needs Plan" means a plan to be completed by state agencies that own or plan to build or buy a building with 10,000 or more square feet; lease or plan to lease a site with 25,000 or more square feet of conditioned space for a term of ten years or more; plan to seek any legislative or Emergency Board approval for a major construction, acquisition or leasing project; or plan to seek planning funds for a project that is anticipated to cost more than \$500,000 over the next three biennia.

Stat Auth: ORS 276.227

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Stats. Implemented:
Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04

125-125-0150

Statewide Facility Planning Process

(1) The statewide planning process provides a means of evaluating if state facilities are planned, financed, acquired, constructed, managed and maintained in a manner that maximizes and protects this investment.

(2) The described budget review process program does not apply to institutions of higher education, community colleges, Oregon Health Sciences University, SAIF Corporation, Lottery, Secretary of State, Treasurer's Office, or to the Legislative or Judicial branches.

(3) The Department shall implement and maintain a planning process. This process shall coordinate state facilities' data, standards, maintenance planning, and capital project planning. The Department shall use the Board to assist in the review of agency plans and other associated documents and to advise the Director.

(4) The Statewide Facilities Program shall develop the State Facilities Planning Process Manual. The manual shall provide definitions, examples, and detailed descriptions of required reports to aid agencies in supplying information to the Statewide Program. The manual shall be reviewed biennially before the budget process begins and updated, if needed.

(5) Following the guidelines contained in the State Facilities Planning Process Manual, Agencies shall submit a State Facility Plan through the statewide facilities coordinator if it meets one or more of the following criteria:

(a) The agency owns buildings or plans to build or buy a building of 10,000 or more square feet;

(b) The agency plans a major re-organization;

(c) The agency proposes to enter into a lease of 25,000 or more square feet of conditioned space for a period of ten years or more;

(d) The agency proposes to request a budget to construct a major capital project;

(e) The agency plans to seek a legislative or Emergency Board approval for a major construction or acquisition project.

(f) The agency plans to seek planning funds for a major construction or acquisition project for which the total cost will be \$500,000 or more.

(6) To best coordinate and distribute the facilities data, the Statewide Program shall maintain a State Facility Inventory. The inventory shall be a database of state agency facilities covered under this rule and valued over \$1 million, which shall be updated biennially by agencies. The inventory shall include basic information on these buildings, such as the age, roof replacement schedule, deferred maintenance plan, etc. The data shall be used to make effective decisions on capital projects, space needs, and maintenance of the buildings.

Stat Auth: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04

125-125-0200

Capital Projects Advisory Board

(1) CPAB shall assist the Department in the review of agency plans. It shall be comprised of seven members. Five members shall be public members knowledgeable about construction, facilities management, and maintenance issues. Two members may be state employees. The Director shall appoint the chairperson of the Board.

(2) The term of each member of the Board is determined by the Director.

(3) The Board shall meet monthly or at times deemed advisable by the majority of its members. In addition, the Director may call the Board to meet for the purpose of considering agency reports.

(4) The Board members shall serve without compensation from the Department for travel or per diem.

(5) The Board is advisory to the Director of the Department and is not a governing body of a public body under ORS 192.610. Meetings of the Board shall be treated as public meetings and shall generally follow the notification and other procedures described in the Attorney General's Public Records and Meetings Manual. The Department shall send notice of upcoming meetings to an established and iterative mailing list of interested parties, using electronic methods, where practical. The Department shall also provide information regarding meetings on the Department's website.

(6) The Board shall provide a place on the agenda for public comment. Public comment should be limited to the review process criteria listed in ORS 276.227(3)(d). The Board will accept public comment only on

the review items listed on the meeting agenda. The Board shall acknowledge any public comment and include it in the formal review record.

(7) The Board will not make a recommendation on a plan or other document reviewed without a majority of its members present. If a duly scheduled and noticed meeting does not have a majority of the members present, those present will be considered to be a subcommittee of the Board. The subcommittee will report to the next scheduled Board meeting when a majority is present, and formal action may be taken at that time.

Stat Auth: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04

125-125-0250

Procedure for Submitting Reports for Review

(1) Each state agency shall report to the Board by July 1 of even-numbered years a long-range facility plans and funding strategies that reflect changes in technology and priorities. The reports shall include a Space Needs Plan, a Project Plan, and a Building Maintenance Needs Plan.

(2) The Board shall review the information submitted and presented under section (1) of this rule and make recommendations to the Director by September 1 of even-number years related to long-range plans, the condition of facilities, maintenance schedules, funding strategies and options for new facilities.

(3) The statewide facilities coordinator shall request updated plans from agencies biennially and establish a submittal schedule. This schedule shall include the report due dates and presentation date for each agency to appear before the Board.

(4) The Agency shall provide one electronic copy to the statewide facilities coordinator no later than the due date stated for the agency on the facility planning schedule.

(5) If an Agency has project(s) that require review under OAR 125-125-0350 Salem-Keizer Area Project Review, then a supplemental listing and description of those projects should be prepared and submitted with the other required materials.

(6) The statewide facilities coordinator will provide a substantive analysis of the plans, including review for completeness and responsiveness to issues and provide the information to the Board. The coordinator may return a list of questions to the agency or recommended changes.

Stat Auth: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04

125-125-0300

Procedure for Board Review

(1) Following review of the information by the Department, the agency shall present its plans before the Board, for the purpose of determining if the projects are compatible with the criteria established in the State Facilities Planning Process Manual. The Board may pose further questions to the agency or determine additional action is required and postpone acceptance or comment on the plans.

(2) In order to grant acceptance or favorable comment on the plans, the Board must find the project is compatible with the criteria listed in the State Facilities Planning Process Manual and the Budget Instructions.

(3) No agency subject to this rule shall seek Legislative or Emergency Board approval of projects meeting the criteria of 125-125-0150 without first having obtained review of the project by the Board.

(4) The Board shall accept the report after consideration of agency submissions, testimony, and public testimony, if any. Their comments shall be kept in the formal meeting minutes and provided to the Director and budget analysts for inclusion in the agency's budget package.

Stat Auth: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04

125-125-0350

Salem-Keizer Area Project Review

(1) The Department shall conduct a special review process for projects located within the boundaries of the cities of Salem and Keizer, and the areas that are situated outside the boundaries of any incorporated city in Marion or Polk Counties.

(2) This review process applies to any state officer, board, commission or department authorized by law to engage in capital construction or improvement projects in the areas described by ORS 276.010.

(3) The Department shall use the Board to assist with this review. Reviews will be based upon the development standards and policies con-

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tained in the Area Plans previously developed by the Capitol Planning Commission or as modified by the Department after review by the Board.

(4) Area Plans cover the following state properties: Capitol Mall Area; Airport Road Area; East Salem Area; State Fair and Exposition Center Area; Oregon State Hospital and Penitentiary Properties Area; Oregon School for the Blind Area; and, Oregon School for the Deaf Area.

(5) For the purposes of the review required under this section, project means expenditures for capital construction or for capital improvement. A project does not include the following :

(a) Interior remodeling that does not substantially change the existing use of space to another use (e.g., office space, or space used by the public);

(b) Repair or maintenance that does not substantially change the existing use of space, that does not add additional square footage to a building, and that does not change exterior building design;

(c) Individual plantings within an established landscape plan that do not alter the overall plan concept.

(6) A minor improvement to the building or grounds means an improvement that does not fall within the exceptions under OAR 125-125-0350 and impacts the appearance of the building grounds or exterior.

(7) A major improvement to the building or grounds, addition, or new construction means a total rework of the building exterior or landscaping, an addition to the building, or construction of a new building.

(8) No state agency may expend funds for any project subject to the requirements of this section unless the project has been reviewed and approved through the described review process.

(9) An agency seeking project review will submit a written request to the Statewide Facilities Program not less than 21 days before the next scheduled meeting of the Board. The Department shall provide a standard form for agencies to use to request project review. The Department may waive the notification period for good cause. The requesting agency shall provide 10 copies of materials submitted.

(10) Projects for minor improvements to the building or grounds shall include:

(a) A completed project application form;

(b) A written description of the project;

(c) Site, architectural, and landscaping plans (if applicable) for the project;

(d) Sufficient information to demonstrate compliance with the applicable Area Plan; and

(e) Sufficient information to demonstrate compliance with local zoning and other applicable standards.

(11) Projects for major improvements to buildings or grounds, additions, or new construction shall include an initial submittal including:

(a) A completed project application form;

(b) A written description of the project;

(c) Preliminary site, architectural, and landscaping plans (if applicable) for the project;

(d) A description of the process planned to be used to ensure compliance with the Area Plan and local zoning and other applicable standards; and

(e) A description of any planned meetings with neighborhood groups or other interested members of the public.

(12) Once the design of the major project is completed, the state agency shall make a final project submittal, which shall include:

(a) Site, architectural, and landscaping plans (if applicable) at a design development stage or later;

(b) Sufficient information to demonstrate compliance with the applicable Area Plan;

(c) Sufficient information to demonstrate compliance with local zoning and other applicable standards; and

(d) A record of meetings with neighborhood groups or other interested members of the public.

(13) For new construction projects, facility siting review will be required before starting design and making the required submittals under OAR 125-125-0350(11). For siting review, the following shall be provided:

(a) A completed site need and description form;

(b) A written description of the proposed improvements that will be constructed;

(c) A vicinity map showing the proposed site and its proximity to major streets and surrounding functions;

(d) A topographic map of the proposed site indicating the boundaries for proposed improvements, prominent features, surrounding buildings, and other related information to provide a context for the project;

(e) Preliminary information about whether sewer, water, streets, and other infrastructure is available to service the proposed use;

(f) A preliminary assessment of any wetland, flood plain, environmental, or archeological issues on the site and whether development would likely impact them;

(g) Sufficient information to demonstrate compliance with local zoning, comprehensive plan, and other related land use standards.

(h) If the proposed site is on state-owned property, sufficient information to demonstrate that the proposed use is in compliance with the applicable Area Plan; and

(i) If the proposed site is to be acquired, an assessment of what state-owned properties were considered and why none were acceptable, plus information required by the Facility Siting Policy 125-6-115.

(14) If the project is within the areas included in the Capitol Mall Area Plan, the required submittals shall also include the conclusions from the Capitol Mall Project Review Committee according to the requirements of OAR 125-125-0450.

(15) The Board shall review the material submitted by the agency and acknowledge if the applicable requirements were met. The Board shall also provide an opportunity for interested members of the public to comment about the project's compliance with the Area Plan. The Board will then pass the record of the project review to the agency and the Director.

Stat Auth: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04

125-125-0400

Area Plan Update Responsibilities

(1) Each agency owning property in the Salem-Keizer area shall be responsible for helping maintain an Area Plan for property it owns.

(2) The Department shall develop a standard template for these plans, which shall structure any modifications to existing plans. The Department shall also develop and maintain a coordination plan that addresses the inter-relationship among the different Area Plans and the state's presence in the City of Salem.

(3) The Department shall develop and maintain a review schedule for the Area Plans and a process for coordinating any required changes with the affected agencies and the City of Salem. If outside assistance is required to update the plan, it shall be at the expense of the property owning agency or agencies.

(4) The review schedule shall result in each Area Plan being reviewed before the Board at least once every five years and updated as may be required. At the time of the review, the Board shall provide an opportunity for public comment on any proposed revisions to the plan.

Stat Auth: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04

125-125-0450

Capitol Mall Area Project Review

(1) The Department shall create and maintain a special Capitol Mall Project Review Committee to provide an additional level of design review for Capitol Mall projects. The committee will be comprised of the following members: the manager of the Facilities Division Statewide Program; a representative from the Legislative Assembly; a representative from the City of Salem; and a private design practitioner.

(2) This review process applies to any state office, board, commission or department authorized by law to engage in capital construction or improvement projects in the areas described by ORS 276.010.

(3) In addition to the procedures described for Salem-Keizer Area projects, projects covered by the Capitol Mall Area Plan shall have these additional requirements:

(a) Before submitting the materials for Salem-Keizer Area Project Review, the agency shall submit the material to Capitol Mall Project Review Committee.

(b) The Committee will determine if the proposed project is consistent with the policies and design standards for the Capitol Mall.

(c) The Committee will pass its conclusions to the Board.

(d) For major projects, both the initial submittal and final design submittal will require review.

Stat Auth: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04

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Department of Administrative Services, Public Employees' Benefit Board Chapter 101

Adm. Order No.: PEBB 1-2004

Filed with Sec. of State: 7-2-2004

Certified to be Effective: 7-2-04

Notice Publication Date: 6-1-04

Rules Adopted: 101-015-0010

Rules Amended: 101-001-0000, 101-001-0005, 101-001-0010, 101-001-0015, 101-001-0020, 101-002-0005, 101-002-0010, 101-002-0015, 101-002-0020, 101-005-0010, 101-005-0020, 101-005-0030, 101-005-0040, 101-005-0050, 101-005-0060, 101-005-0070, 101-005-0080, 101-005-0090, 101-005-0100, 101-005-0110, 101-005-0120, 101-005-0130, 101-005-0140, 101-006-0010, 101-006-0020, 101-010-0005, 101-015-0005, 101-020-0005, 101-020-0010, 101-020-0015, 101-020-0018, 101-020-0020, 101-020-0025, 101-020-0030, 101-020-0035, 101-020-0040, 101-020-0045, 101-030-0005, 101-030-0010, 101-030-0015, 101-030-0020, 101-030-0022, 101-030-0025, 101-030-0030, 101-030-0035, 101-030-0040, 101-040-0005, 101-040-0010, 101-040-0015, 101-040-0020, 101-040-0025, 101-040-0030, 101-040-0035, 101-040-0040, 101-040-0045, 101-040-0050, 101-040-0080, 101-050-0005, 101-050-0010, 101-050-0015, 101-050-0020, 101-050-0025, 101-050-0030, 101-060-0005, 101-060-0010, 101-060-0015

Subject: This rulemaking amends current rules and adopts a new rule governing the eligibility of benefits and procedures of the Public Employees' Benefit Board and are made a part of OAR chapter 101 generally. Experience in using the rules, changes and clarification of federal regulations governing Internal Revenue Service Code Section 125, and the ongoing development of the agency-specific PEBB administrative manual has identified the need for clarification of existing rules.

Rules Coordinator: Kristin Keith—(503) 378-2349, ext. 325

101-001-0000

Notice of Proposed Rule Changes

Prior to adoption, amendment, or repeal of any rule, the Public Employees' Benefit Board (PEBB), will give notice of the intended action:

- (1) In the Secretary of State's Bulletin, referred to in ORS 183.360, at least 21 days prior to the effective date;
- (2) By mailing a copy of notice to persons on the PEBB mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule; and
- (3) By mailing or furnishing a copy of the notice to:
 - (a) The Associated Press;
 - (b) Employee organizations certified by the Employment Relations Board if the rule affects employees represented by them;
 - (c) State agency heads, agency personnel managers, fiscal officers and payroll clerks, and insurance carriers;
 - (d) The Capitol Building Press Room;
 - (e) The Oregon State Bar Association; and
 - (f) The State Legislator who introduced legislation that caused a rule to be adopted, amended or repealed, and the chair or co-chair of all committees that reported the bill out. If notice cannot be given to the Legislator, notice will be provided to the Speaker of the House of Representatives and the President of the Senate.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 183.310 - 183.550, 192.660, 243.061 - 243.302, 292.05

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04

101-001-0005

Uniform and Model Rules of Procedure

The Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedure Act, effective January 1, 2004, are adopted as rules of procedure of the Public Employees' Benefit Board and are made a part of OAR chapter 101.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedures is available from the office of the Attorney General or the Department of Administrative Services, Public Employees' Benefit Board.]

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 183.310 - 183.550, 192.660, 243.061 - 243.302, 292.05

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04

101-001-0010

Insurance Plan Implementation Procedures

(1) The Plan Year will be determined by the Board. Certain benefit plans and insurance policies may deviate from the Plan Year with Board approval.

(2) PEBB may conduct Open Enrollment Periods and require re-enrollment in insurance policies.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 183.310 - 183.550, 192.660, 243.061 - 243.302, 292.05

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04

101-001-0015

Disbursement of PEBB Fund Monies

The Public Employees' Benefit Board Fund was created for the purpose of maintaining insurance program stabilization reserves. PEBB may disburse any or all monies in the fund for any of the following purposes:

- (1) To reimburse insurers for monies due under the applicable contract (For example, when benefit plan expenses exceed premium revenues);
- (2) To minimize premium increases resulting from random experience flux, inflationary variations or any other cause;
- (3) To minimize impact on contributions to premiums due to benefit plan design changes;
- (4) To pay for expenses critical to administration of PEBB programs (For example, data processing, benefit plan communications, etc.); and
- (5) To pay for services, programs, or studies that will reduce benefit plan costs.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.135

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04

101-001-0020

Social Security Numbers

The Public Employees' Benefit Board may use Social Security numbers of participants in PEBB-sponsored benefit plans to uniquely identify the participant only if PEBB obtains consent from the participant.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061 - 243.302

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-002-0005

Powers and Duties of the Board

(1) Pursuant to ORS 243.125, it will be within the powers and duties of the Board to study all matters connected with providing adequate benefit plan coverage for Eligible Employees on the best basis possible with relation both to the welfare of the employees and to the state.

(2) The Board will design benefit plans, devise specifications, analyze carrier responses to advertisements for bids and decide on the award of contracts. The Board will place emphasis on:

- (a) Employee choice among high quality benefit plans;
- (b) A competitive marketplace;
- (c) Benefit plan performance and information;
- (d) Employer flexibility in benefit plan design and contracting;
- (e) Quality customer services;
- (f) Creativity and innovation;
- (g) Benefit plans as part of total employee compensation; and
- (h) The improvement of employee health.

(3) The Board will prepare specifications, invite bids, and do acts necessary to award contracts for benefit plan coverage of Eligible Employees.

(4) The Board may retain consultants, brokers, or other advisory personnel as it determines necessary; and subject to the State Personnel Relations Law, will employ such personnel as are required to perform the functions of the Board.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 183.310-550, 192.660, 243.061-302 & 292.051

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04

101-002-0010

Conduct of Meetings of the Board

(1) The Board will select one of its appointed voting members as chairperson and another voting member as vice chairperson.

(2) Meetings will be conducted by and will be under the control of the chairperson of the Board. In the absence of the chairperson, the vice chairperson or other Board member designated by the chairperson in the absence of the vice chairperson will preside. All meetings of the Board will be conducted in the matter prescribed by and in accordance with the Oregon Public Meetings Law, ORS 192.610 to 192.690.

(3) No person will smoke any cigar or cigarette, or use tobacco in any form in meetings of the Board.

Stat. Auth.: ORS 243.061 - 243.302

ADMINISTRATIVE RULES

Stats. Implemented: ORS 183.310-550, 192.660, 243.061-302 & 292.051
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04

101-002-0015

Public Employees' Benefit Board Appeal Procedure and Delegation

(1) **Appeal of Administrative and Eligibility Issues to PEBB.** The following procedure will be used by individuals to request review with respect to administrative or eligibility issues:

(a) **To a Benefits Counselor.** If an individual requesting insurance coverage through PEBB receives what the individual considers an incorrect or unfair denial from the agency or insurance carrier, the individual may seek reconsideration by a Benefits Counselor. The request for reconsideration may be in writing or by telephone. The Benefits Counselor will review the request and make a determination within 45 days of the date of receipt of the request. If a determination cannot be made within 45 days, the individual will be notified.

(b) **To Benefits Manager.** If an individual receives an oral or written denial of a request for reconsideration from the PEBB Benefits Counselor and the individual is dissatisfied with the denial, the individual may seek reconsideration of the denial by the PEBB Benefits Manager. The request for reconsideration must be made in writing and received by the Benefits Manager within 45 days of the date of the denial. Upon receipt of the request for reconsideration, the Benefits Manager will review the request and determine whether to deny or grant the request. The Benefits Manager will send a written notice and explanation to the individual of the Benefits Manager's decision within 30 days after receipt by the Benefits Manager of the request for reconsideration.

(c) **To Administrator or Designee.**

(A) The Benefits Manager may forward, in his or her discretion, and with the consent of the Administrator or designee, a request for reconsideration from the individual to the Administrator or designee for a determination. If a request for reconsideration is forwarded from the Benefits Manager, the Administrator or designee will send a written notice and explanation to the individual of the decision within 30 days after receipt by the Benefits Manager of the request for reconsideration.

(B) If the individual is dissatisfied with the determination of the Benefits Manager, the individual may request further reconsideration by the PEBB Administrator or designee. A request for reconsideration must be made in writing and received within 60 days of the date of the determination by the Benefits Manager. If PEBB receives a timely written request for reconsideration of a prior determination by the Benefits Manager, the Administrator or designee will review the request and determine whether to deny or grant the request. The Administrator or designee will send a written notice and explanation to the individual of the decision within 30 days after receipt of the request for reconsideration from the individual.

(d) **To Operations Subcommittee.** The Administrator or designee may forward a request for reconsideration from the individual or the Benefits Manager to the PEBB Operations Subcommittee or the Board for review and determination. If the individual is dissatisfied with a determination of the Administrator or designee, the individual may request further reconsideration by the PEBB Operations Subcommittee. A request for reconsideration must be made in writing and received by the Operations Subcommittee within 30 days of the date of the determination by the Administrator or designee. If a request is forwarded to the Operations Subcommittee, or the Operations Subcommittee receives a timely request for reconsideration, the Subcommittee will review the request and determine whether to deny or grant the request. The Subcommittee will send a written notice and explanation to the individual of the Subcommittee's determination within 30 days after the next regularly scheduled meeting of the Subcommittee.

(e) **To the Board.** If an individual is dissatisfied with a determination of the Operations Subcommittee, the individual may request further reconsideration by the Board. A request for reconsideration must be made in writing and received by the Board within 30 days of the date of the determination by the Operations Subcommittee. A request for reconsideration may be forwarded, with the consent of the Board, by the Operations Subcommittee to the Board for review and a determination. If a request is forwarded to the Board by the Administrator or the Subcommittee, or the Board receives a timely request for reconsideration, the Board will review the request and determine whether to deny or grant the request. The Board will send a written notice and explanation to the individual of the Board's determination within 30 days after the next regularly scheduled meeting of the Board.

(f) An individual may appeal the Board's decision as provided under the Oregon Administrative Procedures Act, ORS chapter 183.

(g) An individual will be notified of the status of his or her request for reconsideration within 15 days of receipt of the request for reconsideration by the applicable reviewing entity.

(2) **Delegation to Administrator and Staff.**

(A) The Administrator is hereby authorized to take all action necessary, desirable or convenient to administer the benefit plans of the Public Employees' Benefit Board, including but not limited to:

(A) Acting on any applications for insurance coverage or for refund of premiums.

(B) Reviewing, granting or denying requests for benefit plan coverage or other requests related to providing the benefit plans through PEBB.

(b) The Administrator may, in his or her discretion, refer for a final determination any matter to the Board or to the Operations Subcommittee.

(c) The Administrator is authorized to delegate to subordinates the authority to take any action on the Administrator's behalf.

(3) **Appeal of Contract Coverage Issues To the Insurance Carrier.** The following procedure will be used to request review of an action or determination by an insurance carrier with respect to the insurance coverage provided by the insurance carrier:

(a) If an eligible individual receives a claim denial from an insurance carrier, the eligible individual may appeal directly to the insurance carrier as described in OAR 101-002-0020. The procedure to appeal to the insurance carrier is outlined in the benefit plan's member handbook; or

(b) If the eligible individual receives a claim denial from an insurance carrier, the eligible individual may seek assistance from PEBB with his or her appeal to the insurance carrier. Upon request from the eligible individual, PEBB will verify that the insurance carrier is acting within the scope of the insurance contract. This may require that the eligible individual's request be reviewed through the insurance carrier's internal review process. Within 45 days after receipt of the request for assistance by PEBB, or such later date as may be allowed by any contractual provisions set forth between PEBB and the applicable insurance carrier, the insurance carrier will issue its determination to the Benefits Manager. The Benefits Manager will notify the eligible individual of the insurance carrier's decision within 15 days of receipt of the determination by the Benefits Manager.

(c) The Benefits Manager will review the insurance carrier's determination with the Administrator.

(d) If PEBB agrees with the insurance carrier's determination and so notifies the eligible individual, the eligible individual may appeal the insurance carrier's determination through mediation or binding arbitration.

(e) Information about mediation or binding arbitration can be obtained from the Public Employees' Benefit Board.

Stat. Auth.: ORS 243.061 - 243.302, 659A.060 - 659A.069 & 743.600 - 743.602

Stats. Implemented: ORS 183.310-550, 243.061-302, 192.660 & 292.051

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04

101-002-0020

Procedure to Appeal Determination of Coverage Issues by Insurance Carrier

(1) If an eligible individual receives a claim denial from an insurance carrier, the eligible individual may appeal directly to the insurance carrier. The procedure to appeal to the insurance carrier is outlined in the benefit plan's member handbook.

(2) If the eligible individual is dissatisfied with the result of the insurance carrier's determination as set forth in OAR 101-002-0015 above, the eligible individual may:

(a) Enter into mediation if mutually agreed to by the eligible individual and the insurance carrier;

(b) Appeal through the process of mutually binding arbitration; or

(c) Seek a remedy in the courts.

(3) If the eligible individual chooses mediation, the procedure would include the following:

(a) Mediation is not required unless both parties agree to use it.

(b) The insurance carrier and PEBB would pre-select the mediators for the period of the contract.

(c) The mediator fee will be paid by the insurance carrier, the eligible individual or both as agreed between the eligible individual and the insurance carrier.

(d) The parties will mutually agree and establish a written time deadline by which an agreement must be reached through mediation or the mediation efforts will terminate on the deadline.

(e) The mediation process is optional. There is no requirement that it precede the other dispute resolution procedures provided for in the applicable insurance contract between PEBB and the insurance carrier.

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(f) The eligible individual must request mediation no later than 60 days after the appeal has been denied by the insurance carrier. If the result of the mediation process is not satisfactory to the eligible individual, the eligible individual may request to enter into binding arbitration no later than 60 days after the deadline established under the above subsection (d).

(4) If an agreement is not reached through mediation, the eligible individual may choose to appeal through the process of mutually binding arbitration or seek remedy through the court. If the eligible individual requests binding arbitration, the procedure would include the following elements:

(a) Arbitration is not required unless both parties agree to use it.

(b) The insurance carrier and PEBB will agree in advance on a panel of experienced arbitrators, the amount to be charged for the arbitration service, and whether the cost of the arbitration service is paid for by the insurance carrier, the eligible individual or both.

(c) The eligible individual chooses the arbitrator from the pre-selected panel of arbitrators for claims amounts up to \$5,000. For claims amounts over \$5,000, three arbitrators will be chosen from the pre-selected panel. The method of selection of the three is as follows: the eligible individual chooses one arbitrator, the insurance carrier chooses one, and both select the third.

(d) The costs of representation and witnesses are paid for by the insurance carrier, the eligible individual or both.

(e) The rules of evidence are broad — generally any information that would be allowed in an administrative hearing may be used in arbitration.

(f) The result would be binding on both the insurance carrier and the eligible individual. There would be no appeal to the courts.

(g) The arbitrators agree to provide expedited hearing and ruling.

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

Stat. Auth.: ORS 243.061 - 243.302, 659A.060 - 659A.069 & 743.600 - 743.602

Stats. Implemented: ORS 243.061 - 243.302

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02;

PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0010

Renewal, Screening and Selection for Benefits and Consultants Contracts

The Board is charged with the obligation of obtaining Benefit Plans to provide Benefits to Eligible Employees. OARs 101-005-0040 through 101-005-0140 set forth the screening, selection and renewal process to be used for all such Benefit Plan contracts. OAR 101-005-0010 sets forth the screening and selection process to be used for retaining Consultants. The Board has sole authority for procuring all Benefits contemplated by ORS 243.061 through 243.302.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.125

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0020

Policy

The policy of the Board is to select Contractors in an expeditious and efficient manner that is consistent with the goal of delivering high quality Benefits at a cost that is affordable to both the employees and the state, consistent with the requirements of ORS 242.135. The Board may enter into more than one contract for each type of Benefit Plan sought.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.125 & 243.135(2)

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0030

Definitions

For the purposes of OARs 101-005-0010 through 101-006-0020 the following terms have the meanings indicated below.

(1) "Benefit Plan" includes, but is not limited to:

(a) Contracts for insurance or other Benefits based on life, medical, dental, optical, accidental death or disability insurance; group medical, surgical, hospital or any other remedial care recognized by state law; flexible spending accounts and related services and supplies. Benefit Plan includes comparable Benefits for Eligible Employees who rely on spiritual means of healing.

(b) Comparable Benefits for Eligible Employees who rely on spiritual means of healing;

(c) Self insurance programs managed by the Board; and

(d) Employee assistance programs.

(2) "Benefits" means those goods and services provided under Benefit Plans.

(3) "Board" means the Public Employees' Benefit Board.

(4) "Consultant" means Consultants, brokers or other advisory personnel hired by the Board pursuant to ORS 243.125(5) to assist in acquiring adequate Benefit Plan coverage for Eligible Employees; assist in the study of all matters connected with the provision of adequate Benefit Plan coverage for Eligible Employees; assist in the development and implementation of decision-making processes; design and implement additional programs to review, monitor and assist in the improvement of Eligible Employees and their dependents' health; and provide other services as required by the Board.

(5) "Contractor" means an individual or firm selected to provide Benefits and with whom the Board contracts;

(6) "Eligible Employee" will have the same definition as is described in ORS 243.105(4).

(7) "Emergency" means an unusual circumstance that creates a substantial risk of interruption of Benefit services that requires prompt execution of a contract to remedy the condition.

(8) "Proposal" means a competitive Proposal, binding on the Proposer and submitted in response to a Request for Proposals, where Proposal evaluation and contract award are based on criteria such as Proposer qualifications and experience, product features and characteristics, service quality and efficiency and conformance with the specifications and requirements of the solicitation. Price may be an evaluation criterion for Proposals, but will not necessarily be the predominant basis for contract award.

(9) "Proposer" means a person or entity who submits a Proposal in response to a Request for Proposals.

(10) "Renewal Contractors" means those Contractors who provided the same or similar Eligible Employee Benefit Plan services under a contract with the Board in the year immediately prior.

(11) "Request for Proposals" or "RFP" means the written document soliciting competitive written Proposals and setting forth the criteria and method to be used by the Board to determine the Responsible Proposers offering the best Responsive Proposals.

(12) "Responsible Proposer" will have the meaning described in OAR 101-005-0130.

(13) "Responsive (Non-Responsive) Proposer" will have the meaning described in OAR 101-005-0120.

(14) "Single Source" means the only vendor of a particular product or service reasonably available. If the Board chooses to procure a particular Benefit or service that is only available from one vendor, documentation must be maintained to support the determination that the product or service is available only from that one seller.

(15) "Formal Selection Procedure" means the process described in OAR 101-005-0040(1).

(16) "Informal Selection Procedure" means the process described in OAR 101-005-0040(2)

Stat. Auth.: ORS 243.125(1)

Stats. Implemented: ORS 243.105(1), (2), & (4); 243.125(5)

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0040

Procurement and Renewal Processes

(1) Formal Selection Procedure: This procedure will be used for the procurement of Benefits. Exceptions to this procedure are specified in sections (2), (3), (4) and (5).

(a) Announcement: The Board will give notice of intent to contract for Benefits via the Vendor Information Program (VIP) System and in a trade periodical or newspaper of general circulation. The notice will include a description of the Benefits sought, the scope of the services required, and a description of special requirements, if any. The notice will invite qualified prospective Contractors to apply. The notice will specify when and where the application may be obtained, to whom it must be returned, and the closing date.

(b) Proposal: The Proposal from the prospective Contractor will consist of a statement that describes the prospective Contractor's credentials, performance data and other information sufficient to establish Contractor's qualifications for providing the Benefits sought, as well as any other information requested in the announcement.

(c) Evaluation: The Board will evaluate the qualifications of all applicants and select prospective Contractors as set forth in OAR 101-005-0110.

(d) Award of Contracts: The Board will make final selections based on the evaluation criteria including, but not limited to, applicant capability, experience, approach, compensation requirements and references, and will place emphasis on employee choice among high quality Benefit Plans; plan performance and information; a competitive marketplace; employer flexibility in plan design and contracting; quality customer service; creativity

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and innovation; Benefit Plans as part of total employee compensation; and the improvement of employee health.

(2) **Informal Selection Procedure:** This procedure may be used at the Board's discretion, when the Informal Selection Procedure will not interfere with competition among prospective Contractors, reduce the quality of services or increase costs. The Board will contact a minimum of three prospective Contractors known to the Board to be qualified to propose the sought-after services. The selection will be made by the Board based upon the factors described in paragraph (1)(d) of this rule. If three quotes are not received, the Board will make a written record of its efforts to obtain quotes.

(3) **Single Source Procedure:** PEBB may negotiate with a Single Source provider of Benefits if the services are available only from one Contractor, or the prospective Contractor has special skills uniquely required for the adequate performance of the services.

(4) **Renewal Procedure:** If the Board does not issue a procurement to solicit formal Proposals from qualified carriers, the Board may directly negotiate and enter into renewal contracts each Plan Year with Renewal Contractors to provide Benefit services without following the procedures set forth in sections (1) and (2) above. The Board may renew contracts with Renewal Contractors for as many years as the Board determines is in the best interest of the state and employees. The Board may invite renewal Proposals from those Contractors who provided the same or similar Eligible Employee Benefit Plan services in the year immediately prior. The Board will negotiate with Renewal Contractors and enter into contracts with them after giving full consideration to the factors listed in paragraph (1)(d).

(5) **Emergency Appointment Procedure:** The Board may select a Contractor without following any of the above procedures when Emergency conditions require. In such instance, the recommended appointment and a written description of the conditions requiring the use of this appointment procedure will be submitted to the Board. The Board will determine if an Emergency exists, declare the Emergency and negotiate a contract with the Contractor after giving full consideration to the factors listed in paragraph (1)(d).

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.135

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0050

Mistakes

(1) **Treatment of Mistakes.** If the Board discovers certain mistakes in a Proposal after opening, but before award of the contract, the Board may take the following action:

(a) The Board may waive, or permit a Proposer to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Proposal, or an insignificant mistake that can be waived or corrected without prejudice to other Proposers.

(b) The Board may correct a clerical error if the intended Proposal and the error are evident on the face of the Proposal, or other documents submitted with the Proposal, and the Proposer confirms the Board's correction in writing. A clerical error is a Proposer's error in transcribing its Proposal.

(2) **Rejection for Mistakes.** The Board may reject any Proposal in which a mistake is evident on the face of the Proposal and the intended correct Proposal is not evident or cannot be substantiated from documents accompanying the Proposal; i.e., documents submitted with the Proposal.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.125(1)

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0060

Records Maintenance

PEBB will maintain a file for seven years on the selection process for all contracts entered on behalf of the state that will include:

- (1) The method and copy of announcement;
- (2) The names of firms or individuals and cost estimates considered;
- (3) The basis for selection;
- (4) A copy of the resulting contract and any subsequent amendments.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.135 & 243.125

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0070

Contract Amendments (Including Supplemental Work)

An amendment for additional services that are reasonably related to the scope of work under the original Benefit Plan contract, including extra work, or change that increases the original contract price or length of time, may be made with the Contractor without re-entering the formal procure-

ment process provided that the amendment does not materially alter such a contract.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.135 & 243.125

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0080

RFP Protest; Request for Change; Request for Clarification

(1) **Protest.**

(a) Unless otherwise specified in the RFP, a Proposer must deliver a written protest to the Board not less than 10 calendar days prior to closing;

(b) **Content of Protest.**

(A) A Proposer's written protest will include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the Proposer; and

(iii) A statement of the desired changes to the RFP.

(2) **Request for Change.**

(a) Unless otherwise specified in the RFP, a Proposer may request in writing a change to the contract terms and conditions. If the RFP allows for a Proposer to make a request for changes, and unless otherwise specified in the RFP, a Proposer must deliver the written request for change to the Board not less than 10 calendar days prior to closing;

(b) A Proposer's written request for change will include a statement of the requested changes to the contract terms and conditions, including specifications together with the reason for the requested change.

(3) **Board Response.** The Board will not consider a Proposer's request for change or protest after the deadline established for submitting such request or protest. The Board will provide notice to the applicable entity if it entirely rejects a protest. If the Board agrees with the entity's request or protest, in whole or in part, the Board will either issue an addendum reflecting its determination under OAR 137-030-0055 or cancel the solicitation under OAR 137-030-0115.

(4) **Extension of Closing.** If the Board receives a written request for change or protest from a Proposer in accordance with this rule, the Board may extend closing if the Board determines an extension is necessary to consider the request or protest and to issue an addendum, if any, to the RFP.

(5) **Clarification.** Prior to the deadline for submitting a written request for change or protest, a Proposer may request that the Board clarify any provision of the RFP. The Board's clarification to a Proposer, whether orally or in writing, does not change the RFP and is not binding on the Board unless the Board amends the RFP by addendum.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.135 & 243.125

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0090

Addenda to an RFP

(1) **Issuance; Receipt.** The Board may change an RFP only by written addenda. A Proposer will provide written acknowledgement of receipt of all issued addenda with its Proposal, unless the Board otherwise specifies in the addenda.

(2) **Notice and Distribution.** The RFP will specify how the Board will provide notice of addenda and how the Board will make the addenda available.

(3) **Timelines; Extensions.** The Board will issue addenda within a reasonable time to allow prospective Proposers to consider the addenda in preparing their Proposals. The Board will extend the closing if the Board determines prospective Proposers need additional time to review and respond to addenda. Except to the extent required by public interest, the Board will not issue addenda less than 72 hours before the closing unless an addendum also extends the closing.

(4) **Request for Change or Protest.** Unless a different deadline is set forth in an addendum, a Proposer may submit a written request for change or protest to the addendum by the close of the Board's next business day after issuance of the addendum.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.135 & 243.125

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0100

Extension of Time for Acceptance of Proposal

The Board may request, orally or in writing that Proposers extend, in writing, the time during which the Board may consider their Proposal. If a Proposer agrees to such extension, the Proposal will continue as irrevocable, valid and binding on the Proposer for the agreed-upon extension period.

Stat. Auth.: ORS 243.061 - 243.302

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Stats. Implemented: ORS.243.125(1)
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0110

Evaluation of Proposals

(1) Evaluation. The evaluation process described in this rule applies to the Formal Selection Procedure set forth in OAR 101-005-0040(1). The Board and any assigned representatives, including but not limited to, PEBB stakeholders and staff will evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Board will evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best responsive Proposal or Proposals.

(2) Competitive Range; Protest; Award.

(a) Determining Competitive Range. If the Board does not cancel the solicitation, after the opening the Board will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Board will determine the Proposers in the competitive range.

(b) Protesting Competitive Range. The Board will provide written notice to all Proposers identifying Proposers in the competitive range. A Proposer that is not within the competitive range may protest the Board's evaluation and determination of the competitive range in not more than two business days after the Board has sent written e-mail notice of the competitive range to all Proposers. After opening, all Proposals are open for public inspection subject to the Oregon Public Records Law.

(c) Intent to Award; Discuss or Negotiate. After the protest period provided in accordance with paragraph (2)(b) expires, or after the Board has provided a final response to any protest, whichever date is later, the Board may engage in discussions and negotiations with Proposers in the competitive range.

(3) Discussions and Negotiations. If the Board chooses to enter into discussions and negotiations with the Proposers in the competitive range, the Board will proceed as follows:

(a) Initiating Discussions. The Board will initiate oral or written discussions and negotiations with all of the Proposers in the competitive range regarding their Proposals.

(b) Conducting Discussions. The Board may conduct discussions and negotiations with each Proposer in the competitive range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions or negotiations with each Proposer. The Board may terminate discussions and negotiations with any Proposer in the competitive range at any time. However, the Board will offer all Proposers in the competitive range the opportunity to discuss their Proposals with the Board before the Board notifies Proposers of the award decisions.

(A) In conducting discussions, the Board and any designated representatives:

(i) Will treat all Proposers fairly and will not favor any Proposer over another;

(ii) Will not discuss Proposers' Proposals with any other Proposers and will maintain all Proposals as confidential documents.

(B) At any time during the time allowed for discussions and negotiations, the Board may:

(i) Continue discussions and negotiations with a particular Proposer or Proposers; or

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the competitive range;

(C) The Board may continue discussions and negotiations with Proposers until the Board has determined which Proposer or Proposers will be awarded contracts.

(d) Intent to Award; Protest. The Board will provide written notice to all Proposers in the competitive range of the Board's intent to award the contracts. An unsuccessful Proposer may protest the Board's intent to award in accordance with OAR 101-005-0140. After the protest period provided in accordance with OAR 101-005-0140 expires, or after the Board has provided a final response to any protest, whichever date is later, the Board may commence final contract execution with the successful Proposer or Proposers.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.135 & 243.125
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0120

Rejection of a Proposal

Rejection of Proposals.

(1) The Board may reject any Proposal and deem the Proposal as non-responsive upon finding that to accept the Proposal may impair the integri-

ty of the procurement process, or that rejecting the Proposal is in the state's or employees' interest, or that the Proposer failed to provide information required by the RFP.

(2) The Board may reject all Proposals for good cause upon the Board's written finding it is in the state's or employees' interest to do so. The Board will notify all Proposers of the rejection of all Proposals, along with the good cause justification and finding.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.135 & 243.125
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0130

Responsible Proposer

Before awarding a contract, the Board must have information that indicates the Proposer meets the applicable standards of responsibility. To be a Responsible Proposer, the Board must determine that the Proposer:

(1) Is qualified legally to contract with the Board;

(2) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Proposer fails to promptly supply information requested by the Board concerning responsibility, the Board may base the determination of responsibility upon any available information, or may find the Proposer non-responsible; and

(3) Is authorized to do business in Oregon.

(4) Form(s) of Business Entity. For purposes of this rule, the Board may investigate any entity submitting a Proposal. The investigation may include that entity's officers, directors, owners, affiliates, or any other entity acquiring ownership of the entity to determine application of this rule.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.135 & 243.125
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-005-0140

Protest of Contractor Selection, Contract Award

(1) Purpose. An adversely affected or aggrieved Proposer must exhaust all avenues of administrative review and relief before seeking judicial review of the Board's Contractor selection or contract award decision.

(2) Notice of Intent to Award. Unless otherwise provided in the RFP, the Board will provide written notice to all Proposers of the Board's intent to award the contract(s). The Board's award(s) will not be final until the later of the following:

(a) Seven days after the date of the notice, unless the RFP provided a different period for protest; or

(b) The Board provides a written response to all timely filed protests that denies the protests and affirms the award.

(3) Right to Protest Award. An adversely affected or aggrieved Proposer may submit to the Board a written protest of the Board's intent to award within 14 days after issuance of the notice of intent to award the contract, unless a different protest period is provided under the RFP.

(a) The Proposer's protest will be in writing and must specify the grounds upon which the protest is based.

(b) A Proposer is adversely affected or aggrieved only if the Proposer is eligible for award of the contract as a Responsible Proposer and the Board committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated.

(c) The Board will not consider a protest submitted after the time period established in this rule or such different period as may be provided in the RFP.

(4) Authority to Resolve Protests. The chairperson of the Board, or his or her designee, has the authority to settle or resolve a written protest submitted in accordance with the requirements of this rule.

(5) Decision. If a protest is not settled, the chairperson of the Board, or his or her designee, will promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

(6) Award. The successful Proposer will promptly execute the contract after the award is final. The Board will execute the contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.135 & 243.125
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-006-0010

Applicable Personal Service Contract Rules

The following provisions of the Department of Administrative Services' Personal Service Contract's rules listed below will be applicable to PEBB's procurement contracts for services from Consultants, as that term is defined in OAR 101-005-0030(4). Where the following rules refer to the "Contracting Agency" or "Agency", it will mean the Board. Where

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the following rules refer to "Contractors" performing Personal Services Contracts, it will mean Consultants. Where the following rules refer to approval by the Division or DAS, such requirement for approval is not incorporated in these rules, nor is such approval required for the Board to obtain, renew or amend contracts with Consultants. Where the following rules indicate that an Agency will provide notice to DAS or provide DAS with access to its records, such provisions are not incorporated in these rules and such obligations will not apply to the Board. Applicable rules include OAR 125-020-0210 — Contract Form(s); 125-020-0300(2) and (3) — Introduction to Screening and Selection Procedures; 125-020-0310 — Solicitation Requirements; 125-020-0320 — Formal Selection Procedures; 125-020-0330 — Informal Selection Procedures; 125-020-0335 — Selection by Negotiation; 125-020-0340 — Emergencies; 125-020-0350(10) and (3) — Sole Source; 125-020-0360 — Protest Procedures; 125-020-0400 — Contract Requirements; 125-020-0410 — Independent Contractor Status; 125-020-0440 — Tax Compliance; OAR 125-020-0510 — Contract Files; and 125-020-0520(1), (2), (4), (5), (7)(a)(A) and (7)(a)(B) — Contract Amendments.

Stat. Auth.: ORS.243.061 - 243.301

Stats. Implemented: ORS.243.125(1) & (5)

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-006-0020

Renewal process for Consultant's Contracts

(1) Renewal Procedure: If the Board does not issue a procurement to solicit formal Proposals from Consultants, the Board may directly negotiate and enter into renewal contracts with Renewal Contractors to provide Consultant services without following the procedures set forth in OAR 101-006-0010. The Board may renew contracts with Renewal Contractors for as many years as the Board determines is in the best interest of the state. The Board may invite renewal Proposals from those Contractors who provided the same or similar Consultant services in the year immediately prior.

(2) The Board will negotiate with Renewal Contractors and enter into contracts with them after giving full consideration to the following factors which include, but are not limited to: applicant capability, experience, approach, compensation requirements and references.

Stat. Auth.: ORS. 243.061 - 242.301

Stats. Implemented: ORS. 242.125(1) & (5)

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-010-0005

Definitions

Unless the context indicates otherwise, as used in OAR chapter 101, divisions 1 through 60, the following definitions will apply:

(1) "Actively at Work" means:

(a) For medical and dental insurance coverage, an Eligible Employee at work, in Paid Regular status, scheduled for work during the month for which insurance coverage is requested, or using accrued leave on the effective date of coverage. In accordance with the Health Insurance Portability and Accountability Act (HIPAA) (P.L. 104-191) enacted on August 21, 1996, an employee may not be denied eligibility for health insurance coverage based on health status or disability.

(b) For life, disability and accidental death and dismemberment insurance coverage, an Eligible Employee who is physically on-the-job and receiving pay for the first scheduled day of work and performing the material duties of the employee's own occupation at the employer's usual place of business. If an Eligible Employee is incapable of active work because of sickness, injury or pregnancy on the day before the scheduled effective date of his or her insurance coverage or increase in insurance coverage, the insurance coverage or increase in insurance coverage will not become effective until the day after the Eligible Employee completes one full day of active work.

(2) "Administrator" means the individual who administers the benefit plans on behalf of the Board.

(3) "Affidavit of Dependency" means a written document in which an Eligible Employee attests that the dependent meets the criteria set forth in OAR 101-010-0005(7) on the date the document is signed by the Eligible Employee.

(4) "Affidavit of Domestic Partnership" means a written document in which an Eligible Employee and another individual attest that they meet the criteria set forth in OAR 101-010-0005(8) on the date the document is signed by the Eligible Employee and the individual.

(5) "Board" means the Public Employees' Benefit Board established under ORS 243.061.

(6) "Decline Benefits" means the Eligible Employee waives his or her right to the employer contribution and enrollment in any of the insurance

plans available through PEBB, including flexible spending accounts and all voluntary insurance plans.

(7) "Dependent Child" means any child who meets the criteria in (a) and at least one criterion in (b) of the following:

(a) The Dependent Child:

(A) Is unmarried and without a Domestic Partner; and

(i) Is under the age of 19 at the end of the calendar year; or

(ii) Is at least age 19 and under the age of 24 and continues to qualify as a student or meets the gross income test set forth and provided to taxpayers annually by the Internal Revenue Service; and;

(iii) Meets the criteria for a "Dependent Child" of an Eligible Employee, or the Eligible Employee's spouse or Domestic Partner under Section 152 of the Internal Revenue Code, whether or not the Eligible Employee, or the Eligible Employee's spouse or Domestic Partner actually claims or receives a dependent exemption from federal income tax for the child. Not all individuals listed in Section 152 of the Internal Revenue Code are eligible — see 101-010-0005(13).

(b) The Dependent Child:

(A) Is a biological or adopted child or a child placed for adoption with the Eligible Employee or the Eligible Employee's spouse or Domestic Partner;

(B) Is a child living in the home of the Eligible Employee, or the Eligible Employee's spouse or Domestic Partner, who is a legal ward by court decree; a dependent by Affidavit of Dependency; or is under the legal guardianship of the Eligible Employee, or the Eligible Employee's spouse or Domestic Partner;

(C) Is a child aged 24 or older who is incapable of self-sustaining employment by reason of mental retardation or physical handicap. The child must have been covered by the insurance plan at the time of his or her 24th birthday and the physical handicap or mental retardation must have existed prior to the child attaining age 24.

(c) The Dependent Child of a Domestic Partner is entitled to the same benefit plans under these rules as the Dependent Child of an Eligible Employee or his or her spouse.

(8) "Domestic Partner" means an individual who, together with an Eligible Employee, meets all the criteria listed below. The individual and Eligible Employee:

(a) Are both at least 18 years of age;

(b) Share a close personal relationship and are responsible for each other's welfare;

(c) Are each other's sole Domestic Partners;

(d) Are not married to anyone and have not had another Domestic Partner within the prior six months;

(e) Are not related by blood closer than would bar marriage in the State of Oregon;

(f) Have jointly shared the same regular and permanent residence for at least six 6 months; and

(g) Are jointly financially responsible for basic living expenses defined as the cost of food, shelter and any other expenses of maintaining a household.

(9) "Eligible Employee" means an employee of a PEBB participating organization, including state officials, in exempt, unclassified, classified and management service positions who are expected to work at least 90 days; and who work at least Half Time or are in a position classified as job share.

(10) "Family Member" means:

(a) A legally married spouse of an Eligible Employee; or

(b) A Dependent Child.

(11) "Group Medical Plan" for purposes of Opting Out of medical coverage means:

(a) Any medical plan offered or contributed to by an employer or a former employer;

(b) Medical coverage provided by a federal government or other governmental entity as an insurance plan sponsor, employer or former employer such as CHAMPUS or TriCare; and other group medical insurance coverage as approved by PEBB. Reference 101-020-0015 regarding Opting Out of medical insurance coverage.

(12) "Half Time" means an employee who works less than full-time but at least:

(a) Eighty (80) Paid Regular hours per month; or

(b) .5 FTE for OUS employees; or

(c) As defined by collective bargaining.

(13) "Ineligible Dependent" means a dependent who does not meet the definition of spouse, "Domestic Partner", or "Dependent Child" as set forth in 101-010-0005. The following individuals are not eligible:

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(a) Children under age 19 who are other than a biological or adopted child or a child placed for adoption with the Eligible Employee or the Eligible Employee's spouse or Domestic Partner and for whom the Eligible Employee, spouse, or Domestic Partner has no financial or medical responsibility.

(b) Children between the ages of 19 and 24 who are other than a biological or adopted child, or a child placed for adoption with the Eligible Employee or the Eligible Employee's spouse or Domestic Partner and for whom the Eligible Employee, spouse, or Domestic Partner has no financial or medical responsibility or who do not meet the test for student status or gross income as set forth and provided to taxpayers annually by the Internal Revenue Service.

(c) Members of the Eligible Employee's household who may be eligible dependents under Internal Revenue Service guidelines but are not eligible for enrollment in the PEBB benefit plans such as the Eligible Employee's brother, sister, half-brother, half-sister, stepbrother, stepsister, parent, grandparent, great grandparent or other direct ancestor, stepfather, stepmother, brother or sister of the Eligible Employee's father or mother, a son or daughter of the Eligible Employee's brother or sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, foster parent, or foreign students. The exception is when the Eligible Employee has financial and medical responsibility for a child who is under the age of 19 and who qualifies under 101-010-0005(7).

(14) "Open Enrollment Period" means a period designated by the Board during which Eligible Employees are permitted to make changes to their insurance coverage and other benefit plan choices for the next Plan Year.

(15) "Opt Out" means to elect a form of benefit that may include a cash payment, to be determined by the Board, in lieu of receiving medical insurance coverage through PEBB.

(16) "Paid Regular" means paid work time that includes vacation, sick, personal leave and compensatory time.

(17) "PEBB" means the Public Employees' Benefit Board and the system of benefit plans administered under the PEBB program established under ORS 243.061.

(18) "PEBB Participating Organization" means participating state agency, officer, Board, commission, department or other entity of state government.

(19) "Plan Year" means a period of 12 consecutive months, currently designated by the Board as the calendar year of January through December.

(20) "Pre-existing Condition" means:

(a) For medical and dental insurance coverage, a physical or mental condition which was diagnosed or treated or for which medication was prescribed or taken in the six months before coverage begins. A condition is diagnosed whenever a physician tells a person that he or she has that condition or makes an entry to that effect in the person's medical records. This applies even if the physician is examining or treating the person for a different condition.

(b) For life and disability insurance coverage, a mental or physical condition for which an individual has consulted a physician, received medical treatment or services or taken prescribed drugs or medication six months prior to the effective date of insurance coverage.

(21) "Qualified Status Change" (QSC) means any of the following:

(a) Events that change the legal marital status of an Eligible Employee including marriage, death of spouse, divorce, legal separation, or annulment;

(b) Events that change the status of a Domestic Partner relationship, including a Domestic Partner initially meeting qualifying criteria, death of the Domestic Partner or termination of the Domestic Partnership;

(c) Events that change the number of an Eligible Employee's or Domestic Partner's Dependent Children including birth, adoption, placement for adoption or death of a Dependent Child;

(d) A termination or commencement of employment by the Eligible Employee, spouse, or Domestic Partner;

(e) A reduction or increase in hours of employment by the Eligible Employee, spouse, or Domestic Partner that affects eligibility, including a change between Half Time and full-time, or commencement or return from an unpaid leave of absence, or commencement or return from a federal Family and Medical Leave Act (FMLA) leave whether the FMLA leave is paid or unpaid or as otherwise permitted by the (FMLA) and the Oregon Family Leave Act (OFLA);

(f) An event that causes an Eligible Employee's or Domestic Partner's Dependent Child to satisfy or cease to satisfy the eligibility requirements for benefit plan coverage due to age, student status or any similar circumstance;

(g) An increase in Eligible Employee, spouse or Domestic Partner's out-of-pocket premium amount resulting from decisions of the employer or employee;

(h) An involuntary loss of other group medical or dental insurance coverage, HIPAA Special Enrollment because:

(A) An Eligible Employee's spouse or Domestic Partner exhausts COBRA through previous employer;

(B) An Eligible Employee's spouse, Domestic Partner or Dependent Child ceases to be eligible for other group medical or dental insurance coverage (i.e., coverage discontinued by employer); or

(C) Employer contributions toward other group medical or dental insurance coverage from the employer of an Eligible Employee's spouse or Domestic Partner cease;

(i) In compliance with a final judgment, decree or order resulting from a divorce, legal separation, annulment or change in custody proceedings including issuance of a National Medical Support Notice (NMSN) or Qualified Medical Child Support Order (QMCSO) requiring enrollment of a Dependent Child on the existing medical and dental insurance plan(s);

(j) An Eligible Employee or an Eligible Employee's spouse or Domestic Partner moves out of the insurance plan service area, and thus loses eligibility for that insurance plan;

(k) Gain or loss of Medicare or a Medicaid insurance plan;

(l) In the Dependent Care Flexible Spending Account (FSA), dependent care cost changes only if:

(A) The cost change is imposed by a dependent care provider who is not a relative of the employee as defined by IRC 152(a)(1)-(8); or

(B) A change of dependent care provider, relative or not, results in a change in the cost of day care; or

(C) A Dependent Child attains age 13; or

(D) A court makes a change in the legal custody agreement.

(m) A change or cessation of coverage, such as an overall reduction in coverage, addition or elimination of benefit plan options, or changes in the Dependent Child's, spouses' or Domestic Partner's insurance coverage through the employer.

(22) "Reinstatement" or "Reinstated" means to reactivate all previous medical, dental, life, and disability insurance policies, if available, on a guaranteed basis when returning from a leave or termination of employment.

(23) "State Contribution" means the amount of money paid by the State of Oregon on behalf of Eligible Employees for the purchase of the benefit plans provided through PEBB.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-015-0005

Eligible Individuals

The following individuals may receive insurance coverage under the benefit plans provided through PEBB:

(1) An Eligible Employee.

(2) Family Members of an Eligible Employee, provided the Eligible Employee lists the Family Members on his or her application form(s).

(3) A Domestic Partner of an Eligible Employee and the Domestic Partner's Dependent Child(ren), provided the employee lists the Domestic Partner and Dependent Child(ren) on his or her application form(s).

(4) Appointed and elected officials, beginning on the first day of the month following the date the official takes the oath of office. Eligibility for benefit plan coverage terminates on the last day of the month for which the last payroll deduction is taken for the official's office.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 659.450-460, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2004, f. & cert. ef. 7-2-04

101-015-0010

Ineligible Individuals

The following individuals are not eligible to receive insurance coverage under the benefit plans provided by PEBB:

(1) An employee who enrolls in medical or dental insurance coverage as a newly Eligible Employee and subsequently terminates employment prior to the effective date of insurance coverage.

(2) An employee or individual:

(a) Who is engaged as an independent contractor;

(b) Whose periods of employment in emergency work are on an intermittent or irregular basis, or who is employed on less than a Half-Time basis;

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- (c) Is appointed under ORS 240.309 (temporary appointments);
- (d) Who is provided sheltered employment or make-work by the state in an employment or industry program maintained for the benefit of such individuals; or
- (e) Who is provided student health care services in conjunction with enrollment as a student at a state institution of higher education.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 659A.450-460, 743.600-602 & 743.707
Hist.: PEBB 1-2004, f. & cert. ef. 7-2-04

101-020-0005

Medical and Dental Insurance Enrollment — New Employees

(1) A newly hired employee may receive medical and dental insurance coverage effective on the first of the month following the Eligible Employee's hire date and receipt of the completed applicable form(s) by the agency if the applicable premium payment is made and the newly hired employee is actively at work on the effective date of insurance coverage.

(2) A newly hired employee hired on a full-time basis, or a newly hired employee hired on at least Half-Time or job share basis and who is expected to work at least 90 days, is eligible for benefits. Medical and dental insurance coverage will be effective on the first of the month following the Eligible Employee's hire date and receipt of the completed applicable form(s) by the agency regardless of the number of hours worked in the month in which the newly hired employee began work.

(3) A newly hired employee must enroll within 60 days following the newly hired employee's hire date. Coverage will be effective on the first of the month following receipt of the completed applicable form(s) by the agency. A newly hired employee who does not enroll within the initial 60 days following his or her hire date may apply for late enrollment by following late enrollment procedures set forth in OAR 101-020-0040.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04

101-020-0010

Medical and Dental Enrollment — Current Employee

(1) An Eligible Employee must work at least Half Time during the immediately preceding month to be eligible for benefits for the next month.

(2) Except as provided in subsection (3) below, An Eligible Employee may make changes to their benefit plans only during the Open Enrollment Period. If an Eligible Employee wishes to change benefit plans or coverage, the Eligible Employee must submit the completed applicable form(s), as instructed, during the Open Enrollment Period.

(3) An Eligible Employee may make changes to his or her benefit plans outside of the Open Enrollment Period because of and consistent with a Qualified Status Change. The change must be requested within 60 days of the Qualified Status Change event date. Insurance coverage will be effective the first of the month following either the date the agency received the completed applicable form(s) or the Qualified Status Change event date, whichever is later.

(4) It is the responsibility of the Eligible Employee to maintain a valid enrollment.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-020-0015

Opting Out of Medical Insurance Coverage

(1) An Eligible Employee covered by another employer sponsored Group Medical Plan may Opt Out of medical insurance coverage within 60 days following the Eligible Employee's hire date, during the Open Enrollment Period or consistent with a Qualified Status Change event date. An Eligible Employee may receive cash in lieu of medical insurance coverage as determined by PEBB annually. Documentation of another Group Medical Plan as defined in OAR 101-010-0005(11) must be provided by the Eligible Employee at the time of enrollment.

(2) An Eligible Employee who elects to Opt Out of medical insurance coverage may enroll in a medical insurance plan during a subsequent Open Enrollment Period or within 60 days of a Qualified Status Change event date.

(3) An Eligible Employee enrolled in Medicare, Veterans' Administration Benefit Programs or Student Health Insurance may not Opt Out in lieu of enrollment in medical insurance plan coverage.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602, & 743.707
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-020-0018

Declining Benefits

(1) An Eligible Employee may Decline Benefits by waiving his or her right to the employer contribution and enrollment in any of the benefit plans available through PEBB including flexible spending accounts and all voluntary insurance plans. Requests to Decline Benefits must be in writing and submitted to the agency within the timelines governing all other benefit elections.

(2) An Eligible Employee enrolled in any of the benefit plans available through PEBB may Decline Benefits midyear when the Eligible Employee becomes enrolled in another Group Medical Plan. An Eligible Employee who experiences an increase in out-of-pocket premium share may Decline Benefits midyear when the increase in cost is the result of a Qualified Status Change.

(3) An Eligible Employee who previously elected to Decline Benefits may enroll in benefit plans available through PEBB midyear because of and consistent with a Qualified Status Change event. An Eligible Employee who experiences a decrease in out-of-pocket premium share may enroll in benefit plans available through PEBB midyear when the decrease in cost is the result of a Qualified Status Change.

(4) Benefit plan changes must be requested within 60 days of the Qualified Status Change event date. Benefit plan changes will be effective the first of the month following either the date the agency received the completed applicable form(s) or the Qualified Status Change, whichever is later.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 183.310-550, 192.660, 243.061 -302 & 292.051
Hist.: PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-020-0020

Adding An Eligible Family Member or Domestic Partner to Medical and Dental Insurance Coverage

(1) Spouse. A new spouse or the new spouse's Dependent Child(ren) may be added to an Eligible Employee's medical or dental insurance coverage or both by submitting the completed applicable form(s) to the agency within 60 days of the marriage date. Medical or dental insurance coverage or both will be effective on the first of the month following either the date the agency receives the completed applicable form(s) or the Qualified Status Change, whichever is later.

(2) Domestic Partner. A new Domestic Partner or the new Domestic Partner's Dependent Child(ren) may be added to an Eligible Employee's medical or dental insurance coverage or both by submitting the completed applicable form(s) to the agency within 60 days of meeting the criteria for Domestic Partner enrollment and signing the Affidavit of Domestic Partnership. Medical or dental insurance coverage or both will be effective on the first of the month following the date the agency receives the completed applicable form(s) and Affidavit of Domestic Partnership.

(3) Newborn Dependent Child. An Eligible Employee's medical and dental insurance coverage will be automatically effective for a newborn Dependent Child from the moment of birth and for the first 31 days after date of birth. Medical or dental insurance coverage or both will be continuous beyond this 31 day period only if the newborn Dependent Child is added to the Eligible Employee's medical or dental insurance plans or both within 60 days of the date of birth. The initial insurance premium payment is adjusted retroactive to the first of the month following the date of birth. Insurance premium adjustments must occur in whole month increments.

(4) Adding Dependent Child by Affidavit.

(a) A Dependent Child that is not adopted may be added to an Eligible Employee's medical or dental insurance coverage or both by submitting completed applicable form(s) within 60 days of the date of birth or the date the new child is placed in the physical custody of the Eligible Employee or his or her spouse or Domestic Partner and the Eligible Employee or his or her spouse or Domestic Partner has assumed the financial or medical responsibility for the support and care of the child. Affidavit of Dependency form(s) must be included with the enrollment.

(b) Medical or dental insurance coverage or both for a new Dependent Child will be effective on the first of the month following either the date the agency received the completed applicable form(s) and Affidavit of Dependency or the first of the month after eligibility is met, whichever is later.

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(5) Adopted Children. An Eligible Employee's medical and dental insurance coverage will be automatically effective for a newly adopted child of the Eligible Employee for the first 31 days from the date of the adoption decree or date of placement for adoption pending the completion of adoption proceedings. Medical or dental insurance coverage or both will be continuous beyond this 31 day period only if the newly adopted child is enrolled in the Eligible Employee's medical or dental insurance coverage or both within 60 days of the date of the adoption decree or date of placement for adoption. Documentation of the adoption agreement must be included with the enrollment.

(a) The initial premium payment is adjusted retroactive to the first of the month following the date of the adoption decree or date of placement for adoption. Premium adjustments must occur in whole month increments.

(b) Claims payment will not occur prior to the date of the adoption decree or date of placement for adoption.

(c) Medical or dental insurance coverage or both will not be retroactive to the date of birth for an adoptive newborn.

(6) Under HIPAA regulations a Family Member previously eligible for enrollment can be added to medical or dental insurance coverage or both at the same time a new Family Member is added. Medical or dental insurance coverage or both for an eligible individual, other than for the newborn or adopted child of the eligible individual, that is enrolled within 60 days of birth or adoption, will be effective the first of the month following the date the agency receives the completed applicable form(s). Reference: Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) enacted August 21, 1996.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-020-0025

Deleting Ineligible Individuals from Health Plans

An Eligible Employee is responsible for deleting ineligible individuals from his or her insurance plan coverage by submitting the completed applicable form(s) to the agency. Ineligible individuals must be deleted from insurance plan coverage within 60 days of when the individual becomes ineligible. Insurance coverage terminates the last day of the last month of eligibility.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-243.302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04

101-020-0030

Moving Out of Plan's Service Area

An eligible individual who moves out of his or her medical or dental insurance plan's service area and who loses the availability of his or her medical or dental insurance coverage or both experiences a Qualified Status Change and the Eligible Employee may change the enrollment election to another medical or dental insurance plan within 60 days of the date the eligible individual changes residence. The Eligible Employee must re-enroll in medical or dental insurance coverage in the new location within 60 days of the date of change of residence to assure claims are paid. Insurance coverage changes will be effective on the first of the month following receipt of completed applicable form(s) by the agency.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-020-0035

Loss of Other Medical and Dental Insurance Coverage

An Eligible Employee, a Family Member or Domestic Partner who loses other group insurance coverage experiences a Qualified Status Change and may enroll in PEBB insurance plans within 60 days of the date the other group insurance coverage ended. Insurance coverage from a group program to the PEBB program will show continuous group insurance coverage, therefore, the effective date is determined based upon the date the other group insurance coverage ends.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659.450-460, 659.470-494, 743.600-602 & 743.707
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-020-0040

Late Enrollment

Late enrollment occurs when a newly hired Eligible Employee fails to enroll in benefit plans within 60 days following the date of hire or a current Eligible Employee fails to enroll a newly eligible individual within 60 days of gaining eligibility. All late enrollment requests must be reviewed by PEBB.

(1) An Eligible Employee who does not submit completed applicable form(s) during the enrollment time frame required under OAR 101-020-0005 and who submits late completed applicable form(s) may obtain only medical, dental and basic life insurance coverage.

(2) PEBB will allow the Eligible Employee to enroll in a PEBB medical and dental insurance plan of choice. The effective date of insurance coverage will be the first of the month following the agency's receipt of the completed applicable form(s).

(3) An Eligible Employee failing to add a newly eligible individual within the time frames required under OAR 101-020-0020 must complete the applicable form(s) and appeal to PEBB for late enrollment. PEBB will ask the Eligible Employee to document, by explanation with sufficient supporting data that the late enrollment was due to circumstances beyond the member's control or due to a reasonable misunderstanding of the enrollment requirements. If sufficient documentation is received to substantiate the late enrollment, PEBB will allow enrollment of the eligible individual effective the first of the month following the agency's receipt of the completed applicable form(s). If sufficient documentation is not received, PEBB will deny this request to enroll the newly eligible individual.

(4) An Eligible Employee failing to enroll a newborn child within 60 days of birth will be allowed to add the newborn child to his or her existing insurance coverage during the first twelve months of life, retroactive to the date of birth, following receipt of completed applicable form(s) by the agency.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-020-0045

Eligibility Upon Return to Work for Medical, Dental, Life, and Disability Insurance Plans

(1) Loss of Eligible Employee Status. Leave Without Pay:

(a) An employee returning to work from leave without pay status is required to work at least Half Time in a month to be eligible for medical, dental, life, and disability insurance coverage for the following month. The previous active employment enrollment will be reinstated in accordance with OAR 101-040-0010 for the employee's medical, dental, life, and disability insurance plans unless the employee submits completed applicable form(s) requesting an enrollment change that is due to and consistent with a Qualified Status Change event.

(b) When an employee returns to work from leave without pay status due to an on-the-job injury or illness during the period in which the employer is responsible for premium payment under the Continuation of Benefits for Injured Workers (CBIW), ORS 659A.060-659A.069 provisions, and the employee does not meet eligibility for medical and dental insurance coverage, the employer will continue premium payments for medical and dental insurance coverage under the provisions of CBIW until the employee becomes eligible for the insurance coverage, or until the employer has met its obligations under ORS 659A.060-659A.069.

(c) An employee returning to work from leave without pay at the end of a qualified federal Family Medical Leave, qualified state Family Leave, and CBIW will be reinstated in the medical, dental, life, and disability insurance plans that were in effect the day before the leave began. If the employee returns to work the first day immediately following the end of the leave, the medical, dental, life, and disability insurance coverage will be effective retroactive to the first day of the month in which the employee returned.

(d) An employee returning to work from leave due to active military duty will be reinstated in the medical, dental, life, and disability insurance plans that were in effect the day before the leave began. If the employee returns to work the first day immediately following the end of the military leave, the medical, dental, life, and disability insurance coverage will be effective retroactive to the first day of the month in which the employee returned.

(2) Seasonal and Intermittent Employees.

(a) A first time seasonal and intermittent employee is eligible for benefits if he or she is expected to work at least 90 days and they work at least

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Half Time or are in a position classified as job share. Insurance coverage will be effective on the first of the month following the employee's hire date and receipt of the completed applicable form(s) by the agency.

(b) Seasonal and intermittent employee rehire.

(A) A seasonal or intermittent employee is eligible for benefits when the employee has accumulated a total of 60 calendar days of employment (which need not be consecutive) within the current or immediately previous Plan Year. Insurance coverage is effective the first of the month following eligibility for benefits and receipt of the completed applicable form(s) by the agency.

(B) Once a seasonal employee qualifies for insurance coverage in the current or immediately preceding Plan Year, the employee will be reinstated for benefit plans under OAR 101-040-0010 with insurance coverage effective the first of the month following re-employment.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 1-2004, f. & cert. ef. 7-2-04

101-030-0005

Continuation of Group Medical and Dental Insurance Coverage under Provisions of Public Law 99-272, Title X, of the Consolidated Omnibus Budget Reconciliation Act (COBRA)

(1) An eligible individual who continues PEBB medical or dental insurance coverage or both under COBRA provisions has the same rights as are afforded active group members. PEBB will provide information to the eligible individual explaining their rights to insurance coverage and obligations under COBRA.

(2) An eligible individual continuing insurance coverage under COBRA may change insurance plans or add an eligible Family Member or a Domestic Partner during a scheduled Open Enrollment Period.

(3) Qualified beneficiaries experiencing a Qualified Status Change event may change insurance plans at the time of their COBRA election.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-030-0010

Continuation of Coverage for Injured Workers (CBIW) ORS 659.450-659.460.

For an Eligible Employee losing PEBB medical and dental insurance coverage due to a work-related injury or illness, ORS 659.450-659.460 (CBIW) requires the state to continue to pay the state's portion of the premium for PEBB medical and dental insurance coverage in effect at the time of injury or illness for up to 12 months. Payment of the contribution for medical and dental insurance coverage is subject to provisions of the applicable law. A COBRA qualifying event occurs at the end of the CBIW continuation period.

Stat. Auth.: ORS 243.061 - 243.302 & 659.450 - 659.460

Stats. Implemented: ORS 243.061 - 243.302 & 659.450 - 659.460

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04

101-030-0015

Continuation of Coverage for Employees Covered under the Federal Family Medical Leave Act (FMLA)

If the employee has not returned to work, a COBRA qualifying event occurs at the end of the month in which the qualified FMLA leave period ends. A COBRA qualifying event could also occur earlier than the end of the FMLA period if the employee informs the employer that they will not be returning to employment.

Stat. Auth.: ORS 243.061 - 243.302 & 659.450 - 659.460

Stats. Implemented: ORS 243.061 - 243.302 & 659.450 - 659.460

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04

101-030-0020

Continuation of Coverage for Employees Covered under the Oregon Family Leave Law (OFL) — ORS 659.470-659.494

For an Eligible Employee who does not qualify for FMLA, but who does qualify for OFLA, and takes a qualified OFLA leave, the qualifying event date for COBRA continuation is the date the insurance coverage ends.

Stat. Auth.: ORS 243.061 - 243.302 & 659.450 - 659.460

Stats. Implemented: ORS 243.061 - 243.302 & 659.450 - 659.460

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04

101-030-0022

Continuation of Insurance Coverage for Employees on Active Military Leave

An Eligible Employee who would otherwise lose PEBB medical and dental insurance coverage due to active military leave will receive paid continuation of the medical and dental insurance coverage. The continued insurance coverage will be the same insurance coverage as was in place the day before active duty began. The paid insurance coverage will continue for an Eligible Employee on active military duty for the length of the leave or up to, but not to exceed, 12 months.

(1) An Eligible Employee on military leave who is eligible for paid insurance coverage may change insurance plans and add or delete eligible individuals during an Open Enrollment Period or as a result of and consistent with a Qualified Status Change.

(2) An Eligible Employee covered under State of Oregon paid insurance coverage due to active military leave that exhausts his or her 12 month paid insurance coverage period, and is still in active duty status, and has not returned to work, will experience a COBRA qualifying event and will be allowed all COBRA rights of continuation.

(3) For a period up to but not to exceed 12 months, an Eligible Employee enrolled in PEBB-sponsored Life, Accidental Death and Dismemberment (AD&D) and Long Term Care insurance coverage may elect to continue these benefit plans under active military leave by self-paying the premiums to his or her payroll department.

(4) An Eligible Employee enrolled in PEBB-sponsored Short-Term Disability or Long-Term Disability insurance coverage is not eligible to continue these benefit plans under active military leave.

(5) If an Eligible Employee on active military leave returns to work the first day immediately following the end of the military leave, retroactive Reinstatement will occur in accordance with 101-020-0045(d).

(6) An Eligible Employee on unpaid active military leave is not eligible to participate and is not covered by the Dependent Care FSA. Upon return to work and paid status, the Eligible Employee must re-enroll in Dependent Care FSA.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061 - 243.302

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-030-0025

Continuation of Group Medical and Dental Insurance Coverage for Divorced and Widowed Spouses or Domestic Partners Age 55 and Older (ORS 743.600 to 743.602)

(1) An Eligible Employee's widowed or divorced spouse who no longer qualifies for PEBB medical or dental insurance coverage or both due to death or divorce of the Eligible Employee, or a Domestic Partner who no longer qualifies for PEBB medical or dental insurance coverage or both due to death of the Domestic Partner or termination of the Domestic Partnership, and who is 55 years of age or older, and his or her Dependent Child(ren), may continue PEBB medical or dental insurance coverage or both beyond the COBRA period of 36 months after the date of non-qualification. Such eligible individuals may continue their PEBB medical or dental insurance coverage or both until the eligible individual is entitled to Medicare or is covered under another group medical insurance plan, or otherwise loses eligibility under these rules.

(2) An eligible individual who is entitled to Medicare or covered by another group medical insurance plan at the time PEBB medical or dental insurance coverage or both is lost is not eligible to continue PEBB medical or dental insurance coverage or both as described in the above subsection.

Stat. Auth.: ORS 243.061 - 243.302 & 659.450 - 659.460

Stats. Implemented: ORS 243.061 -243.302 & 659.450 - 659.460

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04

101-030-0030

Continuation of Group Medical and Dental Insurance Coverage for Survivors of Active Employees

(1) After the death of an Eligible Employee who was actively employed on the date of death, the covered spouse, Domestic Partner, and Dependent Child(ren) may elect survivor insurance coverage available through the PEBB retiree medical and dental insurance plans on a self-pay basis in lieu of COBRA continuation rights provided in this rule.

(2) A Dependent Child of the Eligible Employee or his or her Domestic Partner may maintain survivor insurance coverage provided they meet all eligibility requirements and are not adopted by a new parent, applicable premium is paid, and the retiree medical and dental insurance plans continue to be offered by PEBB.

(3) The surviving spouse or Domestic Partner may maintain survivor insurance coverage as long as they remain unmarried, or remain free of a

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Domestic Partnership, applicable premium is paid, and the retiree medical and dental insurance plans continue to be offered by PEBB.

(4) Application for survivor insurance coverage must be submitted to the Retiree Plan Administrator within 60 days of the death of the insured Eligible Employee or at any time during, or immediately following, the COBRA continuation period. Medical and dental insurance coverage under the COBRA and survivor insurance coverage must be continuous. Monthly premium payments must be made to the Retiree or COBRA Plan Administrator.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061 - 243.302

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04

101-030-0035

Portability of Medical Insurance Coverage

An eligible individual enrolled in a PEBB sponsored group medical insurance plan may continue medical insurance coverage under a PEBB sponsored insurance plan's portability provisions before, during, or at the end of the period for which medical insurance coverage is provided under COBRA, if the following criteria are met:

(1) The eligible individual was continuously covered for 180 days or more under one or more group medical insurance plans offered by PEBB and issued in the State of Oregon, and the eligible individual lost eligibility for such group medical insurance coverage;

(2) The eligible individual is not covered by another group medical insurance plan or Medicare;

(3) The eligible individual enrolls in a continued medical insurance plan under the portability provisions within 63 days after termination of the group medical insurance coverage described in subsection (1); and

(4) The eligible individual complies with all requirements of the applicable insurance carrier with respect to continuation of medical insurance coverage under the portability plan provisions offered by the insurance carrier.

Stat. Auth.: ORS 243.061 - 243.302 & 659.450 - 659.460

Stats. Implemented: ORS 243.061 - 243.302 & 659.450 - 659.460

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2004, f. & cert. ef. 7-2-04

101-030-0040

Life, Accidental Death and Dismemberment (AD&D), and Disability Insurance Coverage

An Eligible Employee covered through PEBB under Life, Accidental Death and Dismemberment (AD&D) and Disability insurance plans may continue under the insurance plans after an event that results in a loss of eligibility as described in this rule. Except for the portability and conversion options described in subsections (A) and (B) below, the applicable insurance premium payment must be paid by the Eligible Employee each month to the agency.

(1) Life Insurance Coverage:

(a) Medical and Non-Medical Leaves. An Eligible Employee whose employment is interrupted by a leave without pay may continue optional life insurance coverage for up to 12 months from the date that active employee life insurance coverage ends by paying the insurance premium payment in full each month to the agency.

(b) Involuntary Temporary Reduction of Hours. An Eligible Employee who, at the agency's request, loses benefit eligible status due to a temporary reduction in hours of not more than 90 days may continue optional life insurance coverage for up to three months from the date of the loss of eligible status by paying the insurance premium payment in full each month to the agency.

(c) Active Military Leave. An Eligible Employee whose employment is interrupted by active military duty may continue optional life insurance coverage policies for up to 12 months from the date that active employee life insurance coverage ends by paying the insurance premium payment in full each month to the agency.

(d) Lay Off or Termination of Employment. An Eligible Employee may not continue any life insurance coverage through self-payment of insurance premium after lay off or termination of employment by a PEBB participating organization. Optional Employee, Spouse and Domestic Partner Life insurance plans may be purchased through the portability provision set forth below in subsection (A).

(e) Retirement or Termination of Employment Due to Disability. Optional Employee, Spouse, Domestic Partner, Basic and Dependent Life insurance coverage may be converted to individual whole life insurance policies through the life insurance carrier upon the retirement or termination of employment due to disability of the covered Eligible Employee.

(f) Retiree Life Insurance Coverage Option. An Eligible Employee whose life insurance coverage ends due to retirement has the option to purchase the Retiree Life Insurance Option without submitting evidence of insurability. Application to the insurance carrier must be submitted within 60 days of the date active employee life insurance coverage ends.

(g) Death of an Eligible Employee. Optional Spouse, Domestic Partner and Dependent Life insurance coverage may be converted to individual whole life insurance policies or continued via the portability option through the insurance carrier upon the death of the Eligible Employee through whom insurance coverage was obtained.

(A) Continuation of Life Insurance Coverage through Portability. An Eligible Employee may continue the amount of optional life insurance coverage in effect on the date employment ends at the group rate, plus billing fees. Portability is not available for Basic Life or Dependent Life insurance coverage. The policy remains a term life insurance policy. Application must be made directly to the insurance carrier within 60 days of the date active employee life insurance coverage ends.

(i) Lay off or Termination of Employment. Optional Employee and Spouse/Domestic Partner Life insurance coverage is eligible for continuation through portability if the Eligible Employee experiences a lay off or is terminated from employment.

(ii) Retirement or Disability. Optional life insurance coverage may not be continued through portability upon retirement, or if terminating employment due to disability.

(B) Continuation of Life Insurance Coverage through Conversion. An Eligible Employee who loses benefit eligible status due to any reason may convert any life insurance coverage to individual whole life insurance policies. Application must be made directly to the insurance carrier within 60 days of the date active Eligible Employee life insurance coverage ends. An Eligible Employee may continue life insurance coverage under this subsection if the Eligible Employee loses benefit eligible status.

(2) Accidental Death & Dismemberment (AD&D) Insurance Coverage.

(a) Medical and Non-Medical Leaves. An Eligible Employee whose employment is interrupted by a leave without pay may continue AD&D insurance coverage for up to 12 months from the date that active employee insurance coverage ends by paying the premium payment in full each month to the agency.

(b) Involuntary Temporary Reduction of Hours. An Eligible Employee who, at the agency's request, loses benefit eligible status due to a temporary reduction in hours of not more than 90 days may continue AD&D insurance coverage for up to three months from the date of the loss of eligible status by paying the insurance premium payment in full each month to the agency.

(c) Active Military Leave. An Eligible Employee whose employment is interrupted by active military duty may continue AD&D insurance coverage for up to 12 months from the date that active employee AD&D insurance coverage ends by paying the insurance premium payment in full each month to the agency. A contract exclusion is applied for loss resulting from war or act of war.

(d) Lay Off, Termination of Employment or Retirement. An Eligible Employee who experiences a lay off, termination of employment, or retirement by a PEBB participating organization cannot continue AD&D insurance coverage through self-payment of insurance premium.

(A) Continuation of AD&D Insurance Coverage through Portability or Conversion. There are no portability or conversion rights for AD&D insurance coverage.

(3) Short-Term or Long-Term Disability Insurance Coverage.

(a) Medical Leave. An Eligible Employee whose employment is interrupted by a paid or unpaid medical leave is required to pay the insurance premium payments in full each month to the agency to maintain continuous Short-Term and Long-Term Disability insurance coverage if no disability claim is pending. When a disability claim is pending, an Eligible Employee is not required to pay the insurance premium payments in full each month to the agency during the Benefit Waiting Period. If a disability claim is denied insurance premium payments in full must be paid retroactively and continually to the agency at time of claim denial to maintain continuous Short-Term and Long-Term Disability insurance coverage.

(b) Non-Medical Leave. An Eligible Employee whose employment is interrupted by a non-medical leave without pay cannot continue Short or Long-Term Disability insurance coverage through self-payment of insurance premiums.

(c) Involuntary Temporary Reduction of Hours. An Eligible Employee who, at the agency's request, loses benefit eligible status due to a temporary reduction in hours of not more than 90 days may continue

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Short and Long-Term Disability insurance coverage for up to three months from the date of the loss of eligibility status by paying the insurance premium payment in full each month to the agency.

(d) Active Military Leave. An Eligible Employee whose employment is interrupted by active military duty cannot continue Short or Long-Term Disability insurance coverage through self-payment of insurance premiums.

(e) Termination of Employment Due to Disability. An Eligible Employee terminating employment due to a disability is not required to self-pay disability insurance premiums during the Benefit Waiting Period defined in the applicable policy in order to receive the disability insurance benefit.

(f) Continuation of Short-Term and Long-Term Disability Insurance Coverage through Portability or Conversion. There are no portability or conversion rights for the Short-Term or Long-Term Disability insurance coverage.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707, 743.752-760 & PL 104-191

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-040-0005

Benefit Election Changes

(1) Benefit election changes may be made during the Open Enrollment Period by completing and submitting applicable form(s).

(2) A benefit election change request due to a Qualified Status Change event must be submitted within 60 days of the status change event date. The requested benefit election change must be consistent with the type of Qualified Status Change experienced. The benefit election change will be effective the first of the month following either the date the agency receives completed applicable form(s) or the Qualified Status Change, whichever is later.

(3) An employee who has been rehired and returns to work 31 or more days after the date of termination of employment may make benefit election changes without experiencing a Qualified Status Change. The requested benefit election change must be submitted within 60 days of the Eligible Employee's rehire date. The benefit election change will be effective the first of the month following receipt of the completed applicable form(s) by the agency.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-040-0010

Returning to Benefit Eligible Status

An employee is eligible for benefits if he or she is expected to work at least 90 days and work at least Half Time or are in a position classified as job share.

(1) Following Leave Without Pay and Reduction of Hours. An employee who returns to benefit eligible status following a period of ineligibility due to leave without pay or a reduction of hours must work at least Half Time in the month he or she returns to be eligible for benefits the following month.

(2) Following, Lay Off, Termination of Employment, Family and Medical Leave, Continuation of Benefits for Injured Workers, and Active Military Duty.

(a) An employee who returns to benefit eligible status following a period of ineligibility due to lay off, termination of employment, or active military duty is not required to work at least Half Time in the month he or she returns to be eligible for benefits the following month.

(b) An employee who returns to benefit eligible status following Family and Medical Leave or Continuation of Benefits for Injured Workers is not required to work at least Half Time in the month he or she returns to be eligible for benefits the following month.

(c) A returning employee who is not enrolled in any insurance program at the time of lay off or termination of employment is treated as a newly hired employee.

(3) Returning Within 12 Months. A Previously Eligible Employee who returns to Paid Regular status within 12 months of the insurance coverage end date because of any cause has automatic Reinstatement of the insurance coverage options he or she had in effect prior to losing benefit eligibility. Exceptions to Reinstatement are Dependent Care Flexible Spending Account and Long Term Care Insurance coverage. An Eligible

Employee may make benefit election changes when he or she returns to benefit eligible status. Benefit election changes can also be made on account of and consistent with a separate and distinct Qualified Status Change event. An Eligible Employee returning to benefit eligible status before current insurance coverage ends must experience a separate and distinct Qualified Status Change event to be eligible to make benefit election changes. The requested benefit election change must be consistent with the Qualified Status Change event.

(a) Deductibles. An eligible individual receives credit only for deductibles incurred within the Plan Year when the Eligible Employee left employment or went on leave.

(b) Retroactive Effective Date. If an Eligible Employee returns to Paid Regular status on the day immediately following military leave or leave under FMLA or OFLA, insurance coverage options in effect previously are Reinstated retroactive to the first day of the month in which the Eligible Employee returns.

(c) Open Enrollment Rights. An Eligible Employee returning to Paid Regular status within 12 months of the insurance coverage end date but who is not on Paid Regular status during the Open Enrollment Period for the Plan Year during which he or she returns will also have open enrollment rights.

(d) Life Insurance Coverage. An Eligible Employee whose life insurance coverage ends may have the amount of life insurance coverage previously in effect Reinstated without a medical history statement as long as he or she returns to Paid Regular status within 12 months of the insurance coverage end date and did not convert the policy. If an Eligible Employee converted to an individual insurance policy, the Eligible Employee must provide a medical history statement to become insured again under the group policy.

(e) Disability. An Eligible Employee who returns to Paid Regular status within 12 months of the insurance coverage end date may reinstate the amount of disability insurance coverage previously in effect. Credit will be given for Pre-existing Conditions as if there had been no break in disability insurance coverage in the following instances:

(A) If the Eligible Employee becomes insured under the disability insurance plan again within 90 days.

(B) If the Eligible Employee's disability insurance coverage ended due to an occupational disability leave.

(C) If the Eligible Employee's disability insurance coverage ended because the Eligible Employee received Long-Term Disability insurance benefits under the group disability insurance policy.

(D) Returning Beyond 90 Days (Disability Insurance Coverage only).

An Eligible Employee enrolled in a disability insurance plan prior to leaving Paid Regular status will not receive credit for time served toward the Pre-existing Condition limitation if the employee returns to benefit eligible status beyond 90 days. This provision applies consistently to an employee who returns to Paid Regular status within the same Plan Year or in a subsequent Plan Year. An exception is made for an employee returning to Paid Regular status from a medical leave of absence and who received insurance benefits under the Short or Long Term Disability insurance plans during the leave.

(4) Returning Beyond 12 Months. No Reinstatement of previous benefit plans levels exists for an employee returning to active or Paid Regular status after 12 months from the insurance coverage end date. An employee will receive newly hired employee rights. The Eligible Employee may enroll in any benefit plan available by submitting the completed applicable form(s) within 60 days of returning to Paid Regular status. Guarantee issue options are available for the employee returning to Paid Regular status beyond 12 months from the insurance coverage end date, except as restricted in (b) (c) of this section.

(a) Medical and Dental Insurance Coverage. An employee who returns to Paid Regular status after 12 months from the insurance coverage end date due to a leave without pay, layoff or termination of employment will be treated as a newly hired employee and must enroll for in medical and dental insurance coverage.

(b) Life Insurance Coverage. An employee who returns to benefit eligible status is not eligible for guarantee issue of life insurance coverage if previous life insurance coverage has been ported.

(c) Long Term Care. An employee who returns to benefit eligible status is not eligible for guarantee issue of long term care insurance coverage a second time because the Eligible Employee had an initial guarantee enrollment and the opportunity to continue, at the same premium rates, the long term care insurance coverage after separating from employment service.

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(5) Pre-existing Conditions. An eligible individual will be given credit for continuous insurance coverage under a previous medical benefit plan if the previous medical benefit plan coverage was continuous to a date not more than 63 days prior to the effective date of the new PEBB medical benefit plan. Pre-existing Condition limitations do not apply to pregnancy or to a newborn or adopted child younger than age 18 who was covered within 60 days of becoming an eligible individual.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-040-0015 Benefit Eligibility for An Employee Working in Two or More Positions or for Two or More Agencies

(1) An employee working in two or more positions or for two or more PEBB participating organizations must work at least Half Time in one of the positions to be eligible for any PEBB benefit plans. (except job share).

(2) An employee working in two or more positions or for two or more PEBB participating organizations will be eligible for the benefit plans equivalent to no more than one full-time equivalent (FTE) position.

(a) The benefit plans for which the employee will be eligible will be those of the position or PEBB participating organization where the employee meets the definition for benefit plan eligibility; provided, however;

(b) If the employee meets the definition for benefit plan eligibility with one or more positions or PEBB participating organizations, the employee will elect benefit plans through the organization with the highest percentage of FTE; or

(c) If the employee has equal FTE percentages in one or more positions or PEBB participating organizations, the employee will elect benefit plans through the organization with the earlier appointment date; or

(d) If the employee has equal FTE percentages and simultaneous dates of employment in two or more positions or with two or more PEBB participating organizations, the employee may elect the organization through which the benefit plans will be provided.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 659.450-460, 659.470-494, 743.600-602, 743.707 & 743.752-760
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2004, f. & cert. ef. 7-2-04

101-040-0020 PEBB Participating Organization Transfer

(1) When an Eligible Employee transfers to another PEBB participating organization, the organization the Eligible Employee is leaving pays the state contribution for the month following the transfer regardless of hours worked.

(2) All PEBB benefit plan elections must be transferred from the losing PEBB participating organization to the gaining PEBB participating organization with no lapse in insurance coverage.

(3) An Eligible Employee transferring from Oregon University System (OUS) to Oregon State Payroll System (OSPS) or vice versa must complete new benefit plan enrollment forms. Provisions of OAR 101-040-0015 relating to benefit eligibility for an Eligible Employee working in two or more positions or for two or more PEBB participating organizations apply.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 659.450-460, 659.470-494, 743.600-602, 743.707 & 743.752-760
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2004, f. & cert. ef. 7-2-04

101-040-0025 Dental Insurance Coverage

(1) A spouse, Domestic Partner, and Dependent Child(ren) of an Eligible Employee or Domestic Partner will be subject to a 12 month waiting period for basic and major services and a 24-month waiting period for orthodontic services, required by the indemnity dental insurance plan policies, if:

(a) The spouse, Domestic Partner, or Dependent Child(ren) of an Eligible Employee or Domestic Partner was not enrolled in a dental insurance plan when first eligible and continuously covered on a PEBB dental insurance plan by the Eligible Employee.

(b) The spouse, Domestic Partner or Dependent Child(ren) of an Eligible Employee or Domestic Partner experienced a break of 12 months or more in PEBB dental insurance plan coverage and was subsequently re-enrolled during an Open Enrollment Period.

(c) During the 12 month waiting period, insurance coverage is limited to preventive services and relief of pain as provided in the dental insurance plan policy.

(2) An Eligible Employee who changes from one dental insurance plan to another during the Open Enrollment Period or due to a move out of the service area is not subject to the waiting period for dental services.

(3) An Eligible Employee whose spouse, Domestic Partner, or Dependent Child(ren) and Dependent Child(ren) of the Domestic Partner who experience a Qualified Status Change may enroll in a dental insurance plan within 60 days of and consistent with the status change event date. An eligible individual enrolled due to a Qualified Status Change are is not subject to the waiting periods according to the dental insurance plan provisions.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-040-0030 Life Insurance Coverage

(1) Enrollment.

(a) An Eligible Employee may enroll in optional life insurance plans within 60 days of employment, during the Open Enrollment Period, or within 60 days following a Qualified Status Change event date provided he or she shows satisfactory evidence of insurability to the insurance carrier, if applicable. Life Insurance coverage is effective as follows and is subject to the Actively at Work requirements — see 101-010-0005(1)(b):

(A) A Newly Hired Employee. For life insurance coverage not subject to medical underwriting, insurance coverage is effective the first of the month following the date the application is received by the agency if applied for within 60 days of hire date. For life insurance coverage subject to approval of the Medical History Statement, insurance coverage is effective the first of the month following the date of approval.

(B) Open Enrollment. All life insurance coverage amounts are subject to medical underwriting. For life insurance coverage subject to approval of the Medical History Statement, insurance coverage is effective the latter of either the first day of the month following the date of approval, or the first day of the Plan Year.

(C) Qualified Status Change Event. For life insurance coverage not subject to medical underwriting, insurance coverage is effective the first of the month following the date the completed applicable form(s) is received by the agency if applied for within 60 days of the status change event date. For life insurance coverage subject to approval of the Medical History Statement, insurance coverage is effective the first day of the month following approval. The effective date cannot precede the date of the change in status.

(2) Termination of Coverage. Coverage for life insurance plans ends on the last day of the month for which a premium payment was made.

(a) Portability. An Eligible Employee terminating (for reasons other than disability or retirement) may continue their Optional Employee, Domestic Partner and Spouse life insurance coverage at the same age-graded premium rates. A billing fee will be charged by the insurance carrier for administration of this continuation option.

(b) Conversion Rights. An Eligible Employee terminating employment for any reason, or whose hours are reduced below 80 hours of the Paid Regular hours in the month, will have the right to apply for individual life insurance plans. Application must be made within 60 days following termination of insurance coverage. The individual non-group plan will be issued without regard to the health of any person for whom application is made.

(c) Rollover of Optional Employee Life: When two Eligible Employees are married or in a Domestic Partnership and both are state employees, the Eligible Employee or the spouse or Domestic Partner terminating employment can roll over their Optional Life Insurance coverage to the other's life insurance coverage upon termination of employment.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-040-0035 Accidental Death and Dismemberment Insurance Coverage

(1) Enrollment. An Eligible Employee may enroll in the AD&D insurance plan within 60 days of employment, during the Open Enrollment

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Period, or within 60 days following a Qualified Status Change event date. Insurance coverage is effective as follows and is subject to the Actively at Work requirements:

(a) For a newly hired employee, or enrollment changes due to a Qualified Status Change, the effective date is the first of the month following receipt of the completed applicable form(s) by the agency.

(b) For open enrollment changes, the effective date is the first day of the Plan Year.

(2) Termination of AD&D Insurance Coverage. AD&D insurance coverage ends on the last of the month for which a premium payment was made.

(3) Continuation. There are no conversion or portability continuation options for Accidental Death and Dismemberment insurance coverage.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-040-0040

Long Term Disability Insurance Coverage

(1) Enrollment. An Eligible Employee may enroll in Long-Term Disability insurance coverage within 60 days of employment, during the Open Enrollment Period, or within 60 days following a Qualified Status Change event date. Eligible Employee claims will be subject to a Pre-existing Condition limitation and Actively at Work requirements as specified in insurance plan documents. Insurance coverage is effective as follows and is subject to the Actively at Work requirements:

(a) For a newly hired employee enrollment or enrollment changes due to a Qualified Status Change, the effective date is the first of the month following receipt of the completed applicable form(s) by the agency.

(b) For open enrollment changes, the effective date is the first day of the Plan Year.

(c) For purposes of disability insurance coverage, an employee is Actively at Work if he or she is on the job and receiving pay for the first scheduled day of work and performing the material duties of his or her their own occupation at the employer's usual place of business. If an employee is incapable of active work because of sickness, injury or pregnancy on the day before the scheduled effective date of insurance coverage or increase in insurance coverage, the insurance coverage or increase will not become effective until the day after the employee completes one full day of active work.

(2) Termination of Long Term Disability Insurance Coverage. Long Term Disability insurance coverage ends on the last of the month for which a premium payment was made.

(3) Continuation. There are no conversion or portability continuation options for Long-Term Disability insurance coverage.

(4) Reinstatement Following a Compensable On-the-Job Injury or Illness. An Eligible Employee may be Reinstated in his or her Long-Term Disability insurance coverage following a compensable on-the-job injury or illness. Insurance coverage is effective the first of the month following the date the employee returns to work, provided the employee is Actively at Work on that effective day.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-040-0045

Short Term Disability Insurance Coverage

(1) Enrollment. An Eligible Employee may enroll in Short-Term Disability insurance coverage within 60 days of employment, during the Open Enrollment Period, or within 60 days following a Qualified Status Change event date. Eligible Employee claims will be subject to a Pre-existing Condition limitation and Actively at Work requirements as specified in insurance plan documents. Insurance coverage is effective as follows and is subject to the Actively at Work requirements:

(a) For a newly hired employee enrollment or enrollment changes due to a Qualified Status Change, the effective date is the first of the month following receipt of the completed applicable form(s) by the agency.

(b) For open enrollment changes, the effective date is the first day of the new Plan Year.

(c) For purposes of disability insurance coverage, an employee is Actively at Work if he or she is on the job and receiving pay for the first scheduled day of work and performing the material duties of his or her own occupation at the employer's usual place of business. If an employee is

incapable of active work because of sickness, injury or pregnancy on the day before the scheduled effective date of insurance coverage or increase in insurance coverage, the insurance coverage or increase will not become effective until the day after the employee completes one full day of active work.

(2) Termination of Short Term Disability Insurance Coverage. Short Term Disability insurance coverage ends on the last of the month for which premium payment was made.

(3) Continuation. There are no conversion or portability continuation options for Short-Term Disability insurance coverage.

(4) Reinstatement Following a Compensable On-the-Job Injury or Illness: An Eligible Employee may be Reinstated in his or her Short-Term Disability insurance coverage following a compensable on-the-job injury or illness. Insurance coverage is effective the first of the month following the date the employee returns to work, provided the employee is Actively at Work on that effective day.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-040-0050

Dependent Care Flexible Spending Account Program

(1) Enrollment:

(a) An Eligible Employee is one whose expenses qualify for reimbursement under IRS provisions and who is:

(A) Single; or

(B) Married, and the expenses are necessary for both the Eligible Employee and the spouse to work; or,

(C) Married, and the spouse is either disabled, actively seeking employment, or a full-time student at least five months during the year.

(b) An Eligible Employee may enroll in the pretax Dependent Care Flexible Spending Account within 60 days of employment, during the Open Enrollment Period, or within 60 days following and consistent with a Qualified Status Change event date. Coverage is effective as follows:

(A) Newly Hired Employee. Participation in the Dependent Care Flexible Spending Account will be effective the first of the month following receipt of the completed applicable form(s) by the agency.

(B) Open Enrollment. Enrollments occurring during the Open Enrollment Period will be effective the first day of the following new Plan Year.

(C) Change in Family Status. A change to the Dependent Care Flexible Spending Account must be consistent with the Qualified Status Change event. Midyear enrollment change requests must be made within 60 days of the qualifying event date. Midyear enrollment following a Qualified Status Change event date will be effective the first of the month following receipt of the completed applicable form(s) by the agency or following the Qualified Status Change event, whichever is later.

(d) An Eligible Employee who elects to participate in the pretax Dependent Care Flexible Spending Account does not have to re-enroll each Plan Year. Participation will continue from one year to the next unless the Eligible Employee makes a change in participation during the Open Enrollment Period or because of and consistent with a Qualified Status Change event.

(e) In no event may the maximum amount allocated by a participant to any Dependent Care Flexible Spending Account exceed \$5,000 per Plan Year, or \$2,500 per Plan Year for a married participant who files a separate income tax return.

(2) Changes in Participation. According to federal tax regulations, once participants commence participation in a Dependent Care Flexible Spending Account, they cannot change the amount of money deposited in the account, or stop the payroll deductions until the next Open Enrollment Period unless they experience a Qualified Status Change.

(3) Termination of Employment and Rehire.

(a) An Eligible Employee that is terminated and rehired within the same or a subsequent Plan Year cannot be automatically reinstated in the Dependent Care Flexible Spending Account.

(b) A rehired employee may enroll in the Dependent Care Flexible Spending Account within 60 days of their hire date. The enrollment will become effective the first of the month following receipt of the completed applicable form(s) by the employing agency.

(c) An Eligible Employee terminating employment (including retiring) may request, by submission of completed applicable form(s), to stop the Dependent Care Flexible Spending Account deduction in coordination

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with their last work day and final paycheck. The request must be made before the payroll deduction is processed.

(4) Use It or Lose It Rule. The Dependent Care Flexible Spending Account is subject to the Internal Revenue Service "Use It or Lose It" rule. This means that participants must incur all expenses to be reimbursed by the account during the Plan Year (January 1-December 31). While participants may request expense reimbursement from the account through March 31 of the following year, all expenses must have been incurred during the previous Plan Year. Any funds remaining in the account will be forfeited.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-040-0080

Correcting Enrollment Errors

These provisions cover errors that may occur when an Eligible Employee elects benefit plan coverage and when agencies process those elections. If an Eligible Employee becomes aware of an enrollment error at the time they receive their first paycheck stub following the election, the plan identification card, the confirmation statement, or denied claim, it is the Eligible Employee's responsibility to bring the error to PEBB's attention through the appeal process.

(1) Eligible Employee Errors in Completing or Submitting Form(s).

(a) Enrollment errors may occur when an Eligible Employee completes the PEBB enrollment form(s) as a newly hired employee or submits update form(s) to make mid-year enrollment changes or neglects to submit the completed applicable form(s) to the agency.

(b) If an Eligible Employee recognizes they made an enrollment error and it is prior to payroll implementation, the error can be corrected by the agency representative. Implementation means the benefit election has been entered into the payroll system and mailed to the carriers.

(c) Within 60 Calendar Days of the New Hire Date or the Qualified Status Change Event Date.

(A) If the Eligible Employee recognizes they made an enrollment error after payroll implementation, but within 60 calendar days of the new hire date or status change event date, the requested correction must be reviewed by PEBB through the appeal process.

(B) The Eligible Employee must clearly document that the enrollment does not accurately reflect their intent.

(C) If documentation is received confirming the enrollment error, PEBB will correct the error retroactive to the first of the month following the date the benefit election or update form(s) containing the enrollment error was first received by the agency. If documentation confirming the enrollment error is not received within 60 days of the request date for correction PEBB will deny the request to correct the error.

(d) After 60 Calendar Days of the New Hire Date or the Qualified Status Change Event Date.

(A) If the Eligible Employee recognizes they made an enrollment error after 60 calendar days of the new hire date or the status change event date the requested correction must be reviewed by PEBB through the appeal process.

(B) The Eligible Employee must clearly document that the enrollment does not accurately reflect their intent.

(C) If documentation is received confirming the enrollment error PEBB will correct the error effective the first of the month following the receipt of the request to correct the enrollment error. If documentation confirming the enrollment error is not received within 60 days of the request date for correction, PEBB will deny the request to correct the error.

(e) After 120 Calendar Days of the New Hire Date or the Qualified Status Change Event Date. If the Eligible Employee recognizes they made an enrollment error and it is beyond 120 calendar days of the new hire date or the status change event date, the request to correct the error will be denied.

(2) Eligible Employee Errors during Open Enrollment. An Eligible Employee may miss the enrollment timeline or make enrollment errors during the annual Open Enrollment Period. PEBB authorizes agency representatives to accept late completed applicable form(s) and process changes or corrections to enrollment elections without PEBB approval for 30 days following the Open Enrollment Period.

(a) Within 60 Calendar Days of the New Plan Year.

(A) If an Eligible Employee recognizes they made an open enrollment error or neglected to submit the applicable open enrollment form(s) within 60 days of the new Plan Year, the requested correction must be reviewed by PEBB through the appeal process.

(B) The Eligible Employee must clearly document that the enrollment does not accurately reflect their intent.

(C) If documentation is received confirming the open enrollment error, PEBB will correct the error retroactive to the first of the month of the new Plan Year. If documentation confirming the open enrollment error is not received within 60 days of the request date for correction PEBB will deny the request to correct the error.

(b) After 60 Calendar Days of the New Plan Year.

(A) If the Eligible Employee recognized they made an open enrollment error after 60 calendar days of the new Plan Year, the requested correction must be reviewed by PEBB through the appeal process.

(B) The Eligible Employee must clearly document that the enrollment does not accurately reflect their intent.

(C) If documentation is received confirming the open enrollment error PEBB will correct the error effective the first of the month following the receipt of the request to correct the open enrollment error. If documentation confirming the open enrollment error is not received within 60 days of the request date for correction, PEBB will deny the request to correct the open enrollment error.

(c) After 120 Calendar Days of the New Plan Year. If the Eligible Employee recognizes they made an open enrollment error and it is beyond 120 calendar days of the new Plan Year, the request to correct the error will be denied.

(3) Enrollment Errors That Occur When Processing Applicable Forms for Open Enrollment, the New Plan Year, a Newly Hired Employee or a Qualified Status Change. Errors may occur when enrollment elections are processed in the state's payroll system, when an employee receives wrong information, and when an employee does not receive enrollment information in a timely manner.

(a) Within 60 Calendar Days. If it is determined that incorrect information has been provided or transmission of information from the agency to the employee has been delayed, and it is identified within the first 60 calendar days of the agency's receipt of the completed applicable form(s), the agency will correct the error in the payroll system retroactive to the first of the month following the date the form(s) was first received by the agency or the first day of the new Plan Year for Open Enrollment forms and the system will automatically reconcile any overcharges or undercharges.

(b) After 60 Calendar Days.

(A) If it is determined that incorrect information has been provided or information has been delayed, and it is identified after 60 calendar days, PEBB must review any requested corrections.

(B) During PEBB's review, if the agency confirms and provides documentation of the error, PEBB will approve correction of the enrollment error retroactive to the first of the month following the date the form(s) was first received by the agency but no earlier than the first of the previous Plan Year.

(4) Overcharges and Undercharges of Insurance Premium. Overcharges and undercharges of insurance premium payments may occur from enrollment errors, such as an Eligible Employee failing to add or remove dependents from plan coverage or an Eligible Employee listing incorrect birth date information on the form(s). Data entry errors also create insurance premium discrepancies. Processing errors may be corrected as described in (3) Enrollment Errors That Occur When Processing Applicable Forms for Open Enrollment, The New Plan Year, a Newly Hired Employee or a Qualified Status Change. Eligible Employee errors that result in insurance premium discrepancies will be reviewed as follows:

(a) Within 60 Calendar Days of the First Payroll Deduction Reflecting the Discrepancy. PEBB will review requests to correct the error and an insurance premium refund or charge for an Eligible Employee failing to add or remove dependents from coverage or including incorrect birth date information. If notified within the 60 calendar days, PEBB will approve the correction and insurance premium reconciliation retroactive to the date the discrepancy first occurred.

(b) More Than 60 Calendar Days of the First Payroll Deduction. If the Eligible Employee or the agency representative contacts PEBB more than 60 days from the first payroll deduction, PEBB will correct the error the first of the next month. In instances where premiums were paid in error, no premium refund will occur. Exceptions to this rule include:

(A) Eligible Employee voluntary insurance premium deductions.

(B) Self-paid premium amount.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061 - 243.302

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

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101-050-0005

Eligibility for Medical and Dental Insurance Coverage upon Retirement

A retired Eligible Employee, his or her Family Member or Domestic Partner not eligible for Medicare coverage who are enrolled in PEBB medical or dental insurance coverage or both for active Eligible Employees immediately prior to retirement are eligible to continue participation in any PEBB retiree medical or dental insurance plan when they retire by self-payment of premium.

(1) A retired Eligible Employee must be:

(a) Receiving a service or disability retirement allowance under the Public Employees Retirement System or be receiving a service or disability retirement allowance or pension under any other retirement or disability benefit plan or system offered by the State of Oregon for its officers and employees; or

(b) Eligible to receive a service retirement allowance under the Public Employees Retirement System and have reached earliest retirement age under ORS chapter 238; or

(c) Eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by the State of Oregon and have attained earliest retirement age under the plan or system.

(2) A retired Eligible Employee may elect insurance coverage as the retiree, and elect insurance coverage for a spouse, Domestic Partner, eligible Dependent Child(ren) and the Domestic Partner's eligible Dependent Child(ren) under the PEBB retiree medical or dental insurance plans or both within 60 days of the date active Eligible Employee insurance coverage ends. A retired Eligible Employee may select medical only, dental only, or medical and dental insurance coverage. Application is made for PEBB retiree medical or dental insurance coverage by completing applicable form(s) within 60 days of loss of PEBB active Eligible Employee insurance coverage.

(3) Medical or dental insurance coverage under all PEBB sponsored medical and dental insurance plans must be continuous. Enrollment in the PEBB retiree medical or dental insurance plans or both must be continuous from active Eligible Employee insurance coverage until Medicare eligibility. Premium payments and adjustments must occur in whole month increments.

(4) A retired Eligible Employee may elect PEBB medical or dental insurance coverage or both under COBRA continuation of active Eligible Employee insurance plans and then transfer to the PEBB retiree medical and dental insurance plans or both at any time during or immediately following the COBRA continuation period.

(5) An Eligible Employee who elects COBRA continuation following separation from state service and subsequently becomes eligible as a retired Eligible Employee while on COBRA continuation, may continue with the PEBB retiree medical or dental insurance plans as previously elected. Insurance coverage under the PEBB active, COBRA continuation, and retiree medical or dental insurance plans or both must be continuous.

(6) A retired Eligible Employee may continue PEBB medical or dental insurance coverage or both under the PEBB retiree medical and dental insurance plan as long as the premium is paid and PEBB continues to offer retiree insurance plan coverage.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04

101-050-0010

Enrollment Changes

(1) Plan Change Period. PEBB may, from time to time, conduct a plan change period for retiree insurance plan participants. An eligible individual enrolled in the PEBB retiree medical and dental insurance plans does not have the option to change plans during the annual Open Enrollment Period offered to active Eligible Employees.

(2) Adding a Family Member and a Domestic Partner to the Retiree Medical and Dental Insurance Plan:

(a) Spouse. A new spouse or the new spouses' Dependent Child(ren) may be added to a retiree's medical and dental insurance coverage by submitting the completed applicable form(s) to the Retiree Plan Administrator within 60 days of the marriage date. Medical and dental insurance coverage will be effective on the first of the month following either the date the Retiree Plan Administrator receives the completed applicable form(s) or the Qualified Status Change, whichever is later.

(b) Domestic Partner. A new Domestic Partner or the new Domestic Partner's Dependent Child(ren) may be added to a retiree's medical and dental insurance coverage by submitting the completed applicable form(s) to

to the Retiree Plan Administrator within 60 days of meeting the criteria for Domestic Partner enrollment and signing the Affidavit of Domestic Partnership. Medical and dental insurance coverage will be effective on the first of the month following the date the Retiree Plan Administrator receives the completed applicable form(s) and Affidavit of Domestic Partnership.

(c) Newborn Dependent Child. A retiree's medical and dental insurance coverage will be automatically effective for a newborn Dependent Child from the moment of birth and for the first 31 days after date of birth. Medical and dental insurance coverage will be continuous beyond this 31 day period only if the newborn Dependent Child is added to the retiree's medical and dental insurance plans within 60 days of the date of birth. The initial insurance premium payment is adjusted retroactive to the first of the month following the date of birth. Insurance premium adjustments must occur in whole month increments.

(d) Adding Dependent Child By Affidavit. A Dependent Child that is not adopted may be added to a eligible retiree's medical and dental insurance coverage by submitting completed applicable form(s) within 60 days of the date of birth or the date the new child is placed in the physical custody of the retiree or his or her spouse or Domestic Partner and the retiree or his or her spouse or Domestic Partner has assumed the financial or medical responsibility for the support and care of the child. Affidavit of Dependency form(s) must be included with the enrollment.

(A) Medical and dental insurance coverage for a new Dependent Child will be effective on the first of the month following either the date the Retiree Plan Administrator received the completed applicable form(s) and Affidavit of Dependency or the first of the month after eligibility is met, whichever is later.

(e) Adding Dependent Child[ren] by Adoption or Placement for Adoption. A retiree's medical and dental insurance coverage will be automatically effective for a newly adopted child for the first 31 days from the date of the adoption decree or date of placement for adoption pending the completion of adoption proceedings. Coverage will be continuous beyond this 31 day period only if the newly adopted child is added to the retiree's medical and dental insurance plans within 60 days of the date of the adoption decree or date of placement for adoption. Documentation of the adoption agreement must be included with the enrollment.

(A) The initial insurance premium payment is adjusted retroactive to the first of the month following the date of the adoption decree or date of placement for adoption. Insurance premium adjustments must occur in whole month increments.

(B) Insurance claims payment will not occur prior to the date of the adoption decree or date of placement for adoption.

(C) Medical and dental insurance coverage will not be retroactive to the date of birth for adoptive newborns.

(3) Deleting Ineligible Individuals. The retiree is responsible for deleting ineligible individuals from his or her medical and dental insurance plans by submitting the completed applicable form(s) to the Retiree Plan Administrator and maintaining a valid enrollment. Ineligible individuals must be deleted from medical and dental insurance coverage in writing within 60 days of when the individual becomes ineligible. Medical and dental insurance coverage terminates the last day of the last month of eligibility.

(4) Moving Out of an Insurance Plan's Service Area. Eligible individuals who move out of their medical and dental insurance plan's service area and lose the availability of their medical and dental insurance plan experience a Qualified Status Change and may change to another medical and dental insurance plan within 60 days of the date the eligible individual changes residence. The retirees must re-enroll in medical and dental insurance coverage in the new location within 60 days of the date of change of residence to assure insurance claims are paid. The medical and dental insurance coverage changes will be effective on the first of the month following receipt of completed applicable form(s) by the Retiree Plan Administrator or date of residence change, whichever is later.

(5) Loss of Other Coverage. A Family Member or Domestic Partner of a retiree who loses other group medical and dental insurance coverage will experience a Qualified Status Change and may enroll in the PEBB sponsored medical and dental insurance plans within 60 days of the date the other group medical and dental insurance coverage ended. Insurance coverage from a group Medical Plan to the PEBB program must show continuous group insurance coverage; therefore, the effective date is determined based upon the date the other group insurance coverage ends.

(6) Late Enrollment for New and Current Retirees.

(a) A retiree must enroll in the PEBB sponsored retiree medical and dental insurance plans by submitting completed applicable form(s) to the

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Retiree Plan Administrator within 60 days from the loss of active employee insurance coverage. An enrollment request beyond 60 days from the loss of active employee insurance coverage will be considered a late enrollment request. All late enrollment requests must be appealed to PEBB for approval. PEBB will ask the retiree to demonstrate, by explanation, with sufficient supporting data or information that the late enrollment was due to circumstances beyond the retiree's control or due to a reasonable misunderstanding of the enrollment requirements. If the late enrollment is approved the effective date of coverage will be retroactive to termination of active employee insurance coverage. Late enrollment requests received later than 120 days of loss of active employee insurance coverage will be denied.

(b) A Retiree failing to add a Family Member or Domestic Partner within the time frame required under OAR 101-020-0020 must complete the applicable form(s) and appeal to PEBB for late enrollment. PEBB will ask the retiree to demonstrate, by explanation, with sufficient supporting data or information that the late enrollment was due to circumstances beyond the retiree's control or due to a reasonable misunderstanding of the enrollment requirements. If the late enrollment is approved, the effective date of coverage for the Family Member or Domestic Partner will be the first of the month following receipt of completed applicable form(s). Late enrollment requests received beyond 120 days of initial eligibility of the Family Member or Domestic Partner will be denied.

(c) A Retiree failing to enroll a newborn child within 60 days of birth will be allowed to add the newborn child to his or her existing insurance coverage during the first 12 months of life, retroactive to the date of birth, following receipt and approval of completed applicable form(s) by the Retiree Plan Administrator.

(7) Retiree Enrollment Errors. Retiree insurance plan enrollment errors will be administered in accordance with 101-040-0080, Correcting Enrollment Errors.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-050-0015

Retiree Returning to Work for a State of Oregon Agency and in a Benefit Eligible Status

(1) A retiree returning to work on a full-time basis, or returning to work on at least a Half-Time or job share basis, may be eligible for active employee benefit plans. All medical, dental, life and disability insurance coverage previously in effect as an active employee will be Reinstated effective the first day of the month following the date of hire if returning to work within 12 months of the insurance coverage end date. If the retiree returns to active employee status beyond 12 months from the insurance coverage end date, the retiree must complete the applicable form(s) for newly hired employees.

(2) A retiree enrolled in a PEBB non-Medicare retiree insurance plan may suspend the retiree insurance coverage while in active benefit eligible status by notifying the Retiree Plan Administrator.

(3) A retiree enrolled in Medicare who returns to active employee benefit plan eligible status must enroll in the active employee benefit plans. A retiree not enrolled in Medicare may Decline Benefits or enroll in active employee benefit plans.

(4) There may be no break in insurance coverage from PEBB non-Medicare retiree to active employee plans or vice versa. Insurance coverage must be continuous.

(5) A retiree returning to active employee status who continues to be covered under PEBB retiree or COBRA insurance plans, and is receiving state premium subsidies, is not eligible to receive Opt Out cash.

(6) If returning beyond 12 months, new employee hire rights include guarantee issue options for life insurance coverage provided the retiree did not previously convert life insurance plans.

(7) If returning beyond 12 months, the returning employee is not eligible for guarantee issue on Long Term Care insurance coverage a second time. The employee had an initial guarantee issue enrollment and the opportunity to continue the policy following termination from state service at the same rates.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-050-0020

Retiree Survivor Medical and Dental Insurance Coverage

A covered spouse, Domestic Partner, or Dependent Child(ren) of a deceased retiree, who has PEBB retiree insurance coverage, may elect retiree survivor insurance coverage available through the PEBB retiree insurance plans on a self-pay basis in lieu of continuation provided under federal COBRA provisions.

(1) Application for retiree survivor insurance coverage must be submitted to the Retiree Plan Administrator within 60 days of the death of the insured retiree or at any time during, or immediately following the COBRA continuation period. Coverage under the COBRA and retiree survivor insurance coverage must be continuous.

(2) Dependent child(ren) of the retiree or his or her Domestic Partner may maintain insurance coverage provided they meet all eligibility requirements, are not adopted by a new parent, ensure applicable premium is paid, and the insurance plans continue to be offered by PEBB.

(3) The surviving spouse or Domestic Partner may maintain insurance coverage as long as they remain unmarried, or remain free of a Domestic Partnership, ensure applicable premium is paid, and the insurance plans continue to be offered by PEBB.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04

101-050-0025

Retirees Eligible for Medicare

(1) A PEBB retiree not eligible for Medicare coverage may enroll in PEBB non-Medicare retiree insurance plans according to provisions of 101-050-0005.

(2) A Retiree, the retiree's spouse, Domestic Partner, or Dependent Child(ren) who become eligible for Medicare coverage are no longer eligible to continue a PEBB non-Medicare retiree insurance plan. The insurance coverage will be terminated the first of the month following 60 days from the date the ineligible insurance coverage is discovered.

(3) When a retiree becomes eligible for Medicare coverage, he or she is no longer eligible for participation in PEBB retiree insurance plans. If a retiree becomes eligible for Medicare coverage but the spouse or Domestic Partner and Dependent Child(ren) are not, these Family Members may continue PEBB insurance coverage as long as they were already covered on the retiree's insurance coverage when the retiree became eligible for Medicare coverage.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-243.302, 659A.060-069, 659A.150 -186, 743.600-602, 743.707 & 743.752-760
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04

101-050-0030

Application of Premium Subsidies

When an insurance premium subsidy is provided through a co-sponsorship arrangement with the Public Employees Retirement System, the insurance premium subsidy will be applied to individual insurance premium accounts according to the rules of the Public Employees Retirement System.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 659.450-460, 659.470-494, 743.600-602, 743.707 & 743.752-760
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2004, f. & cert. ef. 7-2-04

101-060-0005

Eligible Employee

For purposes of this division, Eligible Employee means retail sales agent, appointed under ORS 471.705, who is subject to an agency agreement with the Oregon Liquor Control Commission to sell distilled spirits in the Commission's agency stores. A temporary liquor agent is not considered an Eligible Employee for PEBB administrative purposes.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, - 659.450-460, - 659.470-494, - 743.600-602, - 743.707 & - 743.752-760
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04

101-060-0010

Eligibility for Medical and Dental Insurance Coverage

Newly Eligible Employee:

(1) A Newly Eligible Employee is defined as an agent who has a signed contract with an effective date of July 1, 1985, or later;

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(2) A Newly Eligible Employee must enroll in medical and dental insurance coverage within 60 days following their contract effective date. Insurance coverage will be effective on the first day of the month following:

- (a) Signing the standard OLCC contract;
- (b) Receipt of completed applicable form(s) for enrollment in PEBB medical and dental insurance coverage; and
- (c) Authorization of a monthly premium payment deduction from the contracted amount.

(3) A Newly Eligible Employee not enrolling in PEBB medical and dental insurance plans during the initial 60 days following their contract effective date may apply during an Open Enrollment Period. An Eligible Employee enrolling a spouse, a Domestic Partner and Dependent Child(ren) during a subsequent Open Enrollment Period may be subject to benefit plan limitations for late enrollment of an eligible individual.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 659.450-460, 659.470-494, 743.600-602, 743.707 & 743.752-760
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2004, f. & cert. ef. 7-2-04

101-060-0015 Insurance Provision

PEBB may establish insurance rates consistent with the active employees' group expected actuarial experience including administrative costs.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061 - 243.302
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04

Adm. Order No.: PEBB 2-2004(Temp)
Filed with Sec. of State: 7-13-2004
Certified to be Effective: 8-31-04 thru 2-27-05

Notice Publication Date:
Rules Adopted: 101-040-0055

Subject: This rulemaking adopts a temporary rule governing the eligibility of benefits and procedures for the Public Employees' Benefit Board in implementing a Healthcare Flexible Spending Account.

Rules Coordinator: Kristin Keith—(503) 378-2349, ext. 325

101-040-0055 Healthcare Flexible Spending Account

(1) An Eligible Employee may enroll in the pretax Healthcare Flexible Spending Account within 60 days of employment, during the Open Enrollment Period, or within 60 days following and consistent with a Qualified Status Change event.

(2) For a newly hired employee participation in the pretax Healthcare Flexible Spending Account will be effective the first of the month following receipt of the completed applicable form(s) by the agency.

(3) Participation elections made during the Open Enrollment Period, to be effective the first of the following Plan Year, will cease at the end of that Plan Year if the Eligible Employee fails to renew the participation annually by completing applicable enrollment form(s) during subsequent Open Enrollment periods.

(4) A midyear participation election to the pretax Healthcare Flexible Spending Account must be consistent with the Qualified Status Change event. A midyear participation election request must be made within 60 days of the Qualified Status Change event date.

(5) A midyear participation election following a Qualified Status Change event will be effective the first of the month following receipt of the completed applicable form(s) by the agency or following the Qualified Status Change event date, whichever is later.

(6) Annual maximum contribution amounts and allowable covered expenses will be determined by the Board. Allowable covered expenses will be those incurred by the Eligible Employee and his or her Family Members, provided the Eligible Employee lists the Family Member on his or her application form(s).

(7) According to federal tax regulations, once an Eligible Employee commences participation in a pretax Healthcare Flexible Spending Account, he or she cannot change the amount of money deposited in the account, or stop the payroll deductions until the next Open Enrollment Period unless they experience a Qualified Status Change event.

(8) An Eligible Employee whose employment is terminated and who is rehired within the same or a subsequent Plan Year cannot be automatically reinstated in the pretax Healthcare Flexible Spending Account.

(9) A rehired employee may enroll in the pretax Healthcare Flexible Spending Account within 60 days of his or her hire date. The enrollment will become effective the first of the month following receipt of the completed applicable form(s) by the employing agency.

(10) An Eligible Employee terminating employment (including retiring) may request, by submission of completed applicable form(s), to stop the pretax Healthcare Flexible Spending Account deduction in coordination with his or her last work day and final paycheck. The request must be made before the payroll deduction is processed.

(11) The pretax Healthcare Flexible Spending Account is subject to the Internal Revenue Service "Use It or Lose It" rule. This means that an Eligible Employee must incur all expenses to be reimbursed by the account during the Plan Year (January 1 - December 31). While an Eligible Employee may request expense reimbursement from the account through March 31 of the following year, all expenses must have been incurred during the previous Plan Year. Any funds remaining in the account will be forfeited.

(12) Upon termination of employment, the Eligible Employee's right to participate in the Healthcare Flexible Spending Account terminates, except as specifically stated in the benefit plan or pursuant to the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA). An Eligible Employee eligible for COBRA continuation and one who has a positive balance in his or her Healthcare Flexible Spending Account shall be given the opportunity to continue, on a self-pay basis, the same benefit coverage the Eligible Employee had under the benefit plan the day before the Qualifying Status Change event for the periods prescribed by COBRA. Contributions for such benefit plan coverage are paid on an after-tax basis for a period of up to but not beyond the current Plan Year.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 279
Hist.: PEBB 2-2004(Temp), f. 7-13-04, cert. ef. 8-31-04 thru 2-27-05

Department of Agriculture Chapter 603

Adm. Order No.: DOA 15-2004
Filed with Sec. of State: 6-17-2004
Certified to be Effective: 6-17-04
Notice Publication Date: 1-1-04
Rules Adopted: 603-095-2900, 603-095-2920, 603-095-2940, 603-095-2960

Subject: The rules effectuate the implementation of the Lower John Day Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et seq.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-095-2900

Purpose

(1) These rules have been developed to implement a water quality management area plan pursuant to authorities vested in the department through ORS 568.900-568.933. The area plan is known as the Lower John Day Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Lower John Day Agricultural Water Quality Management Area, for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Lower John Day subbasin.

Stat. Auth.: ORS 561.190 - 561.191, 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 15-2004, f. & cert. ef. 6-17-04

603-095-2920

Geographic and Programmatic Scope

(1) The Lower John Day Agricultural Water Quality Management Area includes the area that drains into the John Day River and its tributaries downstream from but not inclusive of the Butte Creek drainage and all streams flowing into the Columbia River between the Lower Deschutes drainage and the Willow Creek drainage. The physical boundaries of the Lower John Day Agricultural Water Quality 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 Lower John Day River subbasin in agricultural use and agricultural and rural lands which are lying idle or on which management has been deferred, with the exception of public lands

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managed by federal agencies (USFS and BLM) and activities that are subject to the Oregon Forest Practices Act.

(3) Current productive agricultural use is not required for the provisions of these rules to apply. For example, fallow croplands or rested pastures with no present active use are within the purview of these rules.

(4) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in other geographic areas of the Lower John Day Agricultural Water Quality Management Area.

(5) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency shall work with these Designated Management Agencies to assure that provisions of these rules apply, and to assure that duplication of any services provided or fees assessed does not occur.

Stat. Auth.: ORS 561.190 - 561.191, 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 15-2004, f. & cert. ef. 6-17-04

603-095-2940

Prevention and Control Measures

(1) **Limitations:** All landowners or operators conducting activities on agricultural lands are provided the following exemptions from the requirements of OAR 603-095-2940(2), (3), and (4).

(a) A landowner or operator shall be responsible for water quality resulting from conditions caused by the management of the landowner or operator.

(b) These rules do not apply to conditions resulting from unusual weather events or other circumstances not within the reasonable control of the landowner or operator. Reasonable control of the landowner means that technically sound and economically feasible measures are used to address conditions described in Prevention and Control Measures.

(c) The Department may allow temporary exceptions when a specific integrated pest management plan is in place to deal with certain weed or pest problems.

(d) The capability of a site is the highest ecological status a site can attain given political, social, or economic constraints.

(2) **Waste Management:** Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) **Soil Erosion and Sediment Control:** By January 1, 2008, landowners must control upland soil erosion using technically sound and economically feasible methods.

(a) On croplands, a landowner may demonstrate compliance with this rule by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD) approved conservation plan that meets Resource Management Systems (RMS) quality criteria for soil and water resources; or

(B) Operating in accordance with an SWCD-approved plan for Highly Erodible Lands (HEL) developed for the purpose of complying with the current US Department of Agriculture (USDA) farm program legislation; and farming non-HEL cropland in a manner that meets the requirements of an approved USDA HEL compliance plan for similar cropland soils in the county; or

(C) Farming such that the predicted sheet and rill erosion rate does not exceed 5 tons/ acre/year, as estimated by the Revised Universal Soil Loss Equation (RUSLE); or

(D) Constructing and maintaining terraces, sediment basins, or other structures sufficient to keep eroding soil out of streams.

(b) On rangelands, a landowner may demonstrate compliance with this rule by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management Systems (RMS) quality criteria for soil and water resources, or

(B) Maintaining sufficient live vegetation cover and plant litter, consistent with site capability, to capture precipitation, slow the movement of water, increase infiltration, and reduce excessive movement of soil off the site; or

(C) Minimizing visible signs of erosion, such as pedestal or rill formation and areas of sediment accumulation.

(c) Landowners must control active gully erosion to protect against sediment delivery to streams. 'Active Gully Erosion' means gullies or channels that at the largest dimension have a cross sectional area of at least one square foot and that occur at the same location for two or more consecutive years of cropping or grazing.

(4) **Streamside Management:** By January 1, 2008, management must allow the establishment and improvement, over time, of riparian veg-

etation for streambank stability, filtering sediment and shading, consistent with site capability.

Stat. Auth.: ORS 561.190 - 561.191, 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 15-2004, f. & cert. ef. 6-17-04

603-095-2960

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, the department may conduct an investigation. The department may, at its discretion, coordinate inspection activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution shall be evaluated in accordance with the criteria in ORS 568.900 through 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 through 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 603-095-2960(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 through 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-2960(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2960(4), the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 through 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191, 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 15-2004, f. & cert. ef. 6-17-04

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Adm. Order No.: DOA 16-2004

Filed with Sec. of State: 6-17-2004

Certified to be Effective: 6-17-04

Notice Publication Date: 2-1-04

Rules Adopted: 603-095-3400, 603-095-3420, 603-095-3440, 603-095-3460

Subject: The rules effectuate the implementation of the Crooked River Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et seq.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-095-3400

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Crooked River 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 Crooked River Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Crooked River Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Crooked River Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191, 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 16-2004, f. & cert. ef. 6-17-04

603-095-3420

Geographic and Programmatic Scope

(1) The Crooked River Agricultural Water Quality Management Area consists of the Crooked River Basin with the following exceptions near the

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mouth of the Crooked River: 1) lands south of the Crooked River and west of the range line between R12E and R13E in T14S to exclude the entire Crooked River Ranch subdivision, which is in the Upper Deschutes Agricultural Water Quality Management Area, and 2) lands north of the Crooked River and west of Sherwood Canyon near Smith Rock, which are in the Middle Deschutes Agricultural Water Quality Management Area. The physical boundaries of the Management Area are indicated on the map included as **Attachment I** of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Crooked River Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forested lands with agricultural activities, with the exception of public lands managed by federal agencies and lands that are held in Tribal Trust.

(3) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in other geographic areas of the Crooked River Agricultural Water Quality Management Area.

(4) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will work with these Designated Management Agencies to assure that provisions of these rules apply, and to assure that duplication of any services provided or fees assessed does not occur.

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

Stat. Auth.: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 16-2004, f. & cert. ef. 6-17-04

603-095-3440 Requirements

(1) Landowners must comply with OAR 603-095-3440(2) through (3) within the following limitations. A landowner is responsible for only those conditions resulting from activities controlled by the landowner. A landowner is not responsible for conditions resulting from activities by landowners on other lands. A landowner is not responsible for conditions that: are natural, could not have been reasonably anticipated, or that result from unusual weather events or other exceptional circumstances.

(2) Streamside Riparian Area Management:

(a) Effective January 1, 2009, agricultural management must allow establishment, growth, and active recruitment of streamside riparian vegetation, consistent with site capability, to moderate solar heating, stabilize streambanks, and filter sediment and nutrients from overland flows.

(b) Except as provided in (a), grazing, weed control, and other common agricultural activities are allowed in riparian areas.

(c) Water gaps and hardened crossings are allowed in streams that otherwise meet conditions required under (a).

(3) Waste Management Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

Stat. Auth.: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 16-2004, f. & cert. ef. 6-17-04

603-095-3460

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, the department may conduct an investigation. The department may, at its discretion, coordinate inspection activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution will be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-3460(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-3460(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3460(4), the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 16-2004, f. & cert. ef. 6-17-04

Adm. Order No.: DOA 17-2004

Filed with Sec. of State: 6-17-2004

Certified to be Effective: 6-17-04

Notice Publication Date: 1-1-04

Rules Adopted: 603-095-3500, 603-095-3520, 603-095-3540, 603-095-3560

Subject: The rule effectuate the implementation of the Curry County Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et seq.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-095-3500

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Curry County 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 Curry County Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Curry County Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules (OARs 603-095-3500 through 603-095-3560) is expected to aid in the achievement of applicable water quality standards in the Curry County Water Quality Management Area.

Stat. Auth.: ORS 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 17-2004, f. & cert. ef. 6-17-04

603-095-3520

Geographic and Programmatic Scope

(1) The Curry County Agricultural Water Quality Management Area is comprised of all Curry County drainages and the Floras Creek drainage that extends into Coos County. The physical boundaries of the Management Area are indicated on the map included as **Appendix 1** of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Curry County 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 603-095-3500 through 603-095-3560) will affect any lands in agricultural use on all non-Federal and non-Tribal lands in the Curry County Agricultural Water Quality Management Area.

(a) Agricultural use does not include the use of land for garden plots primarily used for the cultivation of vegetables, flowers, herbs, or fruits for non-commercial use.

(b) The provisions of the Curry County Agricultural Water Quality Management Area Plan and OARs 603-095-3500 through 603-095-3560 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: Appendix referenced are available from the agency.]

Stat. Auth.: ORS 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 17-2004, f. & cert. ef. 6-17-04

ADMINISTRATIVE RULES

603-095-3540

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 controlled 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) Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Effective June 3, 2007, agricultural management activities in the riparian area of perennial streams will be conducted in a manner that allows for the establishment, growth, and maintenance of riparian vegetation consistent with vegetative site capability so as to provide streambank stability and shade.

(a) Exemptions from OAR 603-095-3540(3) are:

(A) Stream crossings, access for irrigation equipment and other accepted water dependent agricultural uses when conducted in a manner that minimizes impacts on streambank stability.

(B) Streams that do not support native trout and are inaccessible to anadromous fish because of barriers at their junction with the Pacific Ocean.

(C) This rule is not intended to prohibit riparian grazing where it can be done while meeting the above vegetative conditions.

Stat. Auth.: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 17-2004, f. & cert. ef. 6-17-04

603-095-3560

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 603-095-3560(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-95-3560(4), "person" does not include any local, state, or federal agency.

(6) Notwithstanding OAR 603-095-3560(4), the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 17-2004, f. & cert. ef. 6-17-04

Adm. Order No.: DOA 18-2004

Filed with Sec. of State: 6-17-2004

Certified to be Effective: 6-17-04

Notice Publication Date: 2-1-04

Rules Adopted: 603-095-3900, 603-095-3920, 603-095-3940, 603-095-3960

Subject: The rules effectuate the implementation of the Lost River Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et seq.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-095-3900

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Lost River Subbasin 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 Lost River Subbasin Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Lost River Subbasin Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with Division 95 rules is expected to aid in the achievement of applicable water quality standards in the Lost River Subbasin Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 18-2004, f. & cert. ef. 6-17-04

603-095-3920

Geographic and Programmatic Scope

(1) The Lost River Subbasin Agricultural Water Quality Management Area is comprised of the Oregon portion of the Lost River subbasin, as defined by the US Geological Survey. 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 Lost River Subbasin Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forested lands with agricultural activities, with the exception of public lands managed by federal agencies and Tribal Trust lands.

(3) Current productive agricultural use is not required for the provisions of these rules to apply.

(4) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in other geographic areas of the Lost River Subbasin Agricultural Water Quality Management Area.

(5) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency 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: Attachment referenced are available from the agency.]

Stat. Auth.: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 18-2004, f. & cert. ef. 6-17-04

603-095-3940

Requirements

(1)(a) A landowner is responsible for only those conditions resulting from activities controlled by the landowner. A landowner is not responsible for conditions resulting from activities by landowners on other lands. A landowner is not responsible for conditions that are natural, could not have been reasonably anticipated, or that result from unusual weather events or other exceptional circumstances. Landowners will not be required to implement practices or management systems that are not practical and effective for their operation. Where a prohibited condition results from the requirement(s) of another government entity, the department will work with the other government entity and the landowner to resolve the condition. As long as the landowner is cooperating with the department in resolving the condition, the department will not assess a civil penalty against the landowner for that condition. Any enforcement action under this provision shall be consistent with the policies described in the water quality management area plan and OAR 603-090-0000(4)(e). The department will consider costs, benefits, and economic feasibility when working with a landowner to resolve a compliance issue. The department will seek input from the local management agency prior to requiring a schedule of corrective practices.

(b) Unless otherwise restricted by state or federal law, conditions resulting from limited duration activities are exempt.

(2) Sheet Rill and Wind Erosion

ADMINISTRATIVE RULES

(a) Combined sheet, rill, and wind erosion of soil, averaged through a crop rotation period, must be less than or equal to T.

(b) If an alternative standard is needed for certain soils, the department and the Klamath SWCD, acting as the Local Management Agency, will request an alternative recommendation from the NRCS State Conservationist for an appropriate erosion control standard.

(3) Streamside Areas:

(a) By December 31, 2005, agricultural activities must allow the establishment or improvement of vegetation to provide bank stability and shading of natural streams consistent with the vegetative capability of the site. Evaluation of vegetation will consider conditions for a stream reach in contiguous ownership.

(b) Except as provided in (a), grazing, weed control, and other common agricultural activities are allowed in riparian areas.

(c) Channel maintenance provided for under ORS 196.600 to 196.905 (Removal Fill laws) is not subject to 603-095-3940(3)(a).

(4) Livestock Waste Management:

(a) Effective on rule adoption, landowners must prevent movement of animal waste into waters of the state from animal handling or feeding operations that concentrate animal waste.

(b) Waste storage and application shall be done in such a way as to keep from exceeding beneficial use for forage and/or crops.

(5) Waste Management Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

Stat. Auth.: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 18-2004, f. & cert. ef. 6-17-04

603-095-3960

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, the department may conduct an investigation. The department may, at its discretion, coordinate inspection activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution will be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-3960(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-3960(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3960(4), the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 18-2004, f. & cert. ef. 6-17-04

Adm. Order No.: DOA 19-2004(Temp)

Filed with Sec. of State: 6-22-2004

Certified to be Effective: 6-22-04 thru 12-15-04

Notice Publication Date:

Rules Adopted: 603-052-1235

Subject: This temporary rule creates a *Phytophthora ramorum* compliance program for nurseries producing plants susceptible to *Phytophthora ramorum* (sudden oak death, ramorum canker and blight). This program is mandatory for growers and dealers of

USDA-listed hosts and associated hosts, and voluntary for other growers and dealers. Participating growers will be inspected, sampled and tested annually. Nurseries found to be free of *P. ramorum* will be eligible to enter into a compliance agreement with the department. Practices designed to minimize the chances of introduction of the disease are components of the compliance agreement.

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

603-052-1235

Phytophthora ramorum Regulated Area for Susceptible Plants

(1) A regulated area is established as authorized under ORS 570.305, 571.015, 571.145, 571.510, and 571.560 to protect Oregon from introduction of *Phytophthora ramorum* (sudden oak death, ramorum canker and blight). This pathogen causes leaf blight, dieback or death in certain trees and shrubs including tanoak, rhododendron, viburnum and camellia. Susceptible plants include species important to Oregon's native forests, horticultural landscapes and nursery industry.

(2) This regulated area includes the entire state of Oregon.

(3) The following definitions apply to ORS 603-052-1235:

(a) "Hosts and associated hosts" means plants on USDA's official list of *P. ramorum* hosts and associated plants, last revised April 29, 2004. [Ed. note: This list is available online at: <http://oda.state.or.us/plant/ppd/path/SOD/index.html> or from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644.]

(b) "Grower," "dealer" and "nursery stock" are defined in ORS 571.005.

(c) Tissue culture plantlets in sealed, sterile containers are exempt from this regulation.

(4) All growers and dealers of host and associated hosts in the regulated area shall enter into compliance agreements with the department as described in section (7). Growers and dealers who do not enter into compliance agreements with the department within 60 days of the adoption of this rule, will be prohibited from selling hosts or associated host plants within the regulated area or out-of-state.

(a) Before growers can enter into a compliance agreement with the department, they must be inspected, tested and certified free of *P. ramorum*, as described in section (6).

(b) Testing is not required for dealers. Dealers are eligible to enter into a compliance agreement with the department as soon as they are able to comply with the requirements of section (7).

(5) Growers and dealers of plant species not listed as hosts or associated hosts may choose to enter into a compliance agreement with the department.

(6) Growers in the certification program shall be inspected and tested annually for *P. ramorum*. Inspection and sampling procedures will meet or exceed USDA standards for nurseries in regulated areas not under quarantine. The department, using federally approved laboratory protocols, will test the samples.

(7) Growers and dealers who enter compliance agreements will be required to:

(a) comply with OAR 603-054-0027 that requires all recipients of shipments of tree and shrub nursery stock imported from out-of-state, to notify the department within two business days of arrival of the shipment,

(b) purchase hosts and associated hosts only from certified sources where official *P. ramorum* certification programs acceptable to the department exist,

(c) have an official inspector inspect and test for *P. ramorum*, hosts and associated hosts purchased from sources where no official certification program exists; these plants must be safeguarded, segregated and held off sale until test results are complete,

(d) for growers, maintain records of all incoming and outgoing shipments of hosts and associated hosts for a minimum of 24 months; dealers must maintain records of incoming shipments for a minimum of 24 months.

(8) Failure to comply with all articles of a compliance agreement will result in revocation of the compliance agreement and decertification.

(9) A list of growers and dealers compliant with these rules will be maintained on the department's web site. The department will update the list as necessary to maintain an accurate accounting of growers and dealers participating in the program. The department will also maintain a list of acceptable official certification programs on its web site.

(10) If *P. ramorum* is found, delimitation and eradication procedures as outlined in USDA's Confirmed Nursery Protocol, as amended April 30, 2004 will be implemented immediately. (Note: this protocol is available online at: <http://oda.state.or.us/plant/ppd/path/SOD/index.html> or from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301,

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telephone 503-986-4644.) Hosts and associated hosts shall not be moved from the nursery/growing site until all conditions of the protocol are met and the department releases the plants.

(11) Violators of this regulated area are subject to the penalties provided by 570.410 and 570.990, including civil penalties up to \$10,000.

Stat. Auth.: ORS 570.305, 571.015, 571.145, 571.510, 510.560, 561.190
Stats. Implemented: ORS 570.305, 571.015, 571.145, 571.510, 510.560
Hist.: DOA 19-2004(Temp), f. & cert. ef. 6-22-04 thru 12-15-04

Adm. Order No.: DOA 20-2004

Filed with Sec. of State: 6-28-2004

Certified to be Effective: 6-28-04

Notice Publication Date: 6-1-04

Rules Amended: 603-027-0105, 603-027-0170, 603-027-0180, 603-027-0206, 603-027-0220, 603-027-0410, 603-027-0635, 603-027-0640, 603-027-0680, 603-027-0700

Subject: Rulemaking to bring Oregon's weights and measures regulations current and uniform with nationally recognized and accepted standards by adopting the 2004 Edition of the National Institute of Standards and Technology (NIST) Handbook 44; adopting the 2004 Edition of NIST Handbook 130 sections on Package and Labeling Regulation, Method of Sale of Commodities, and Examination Procedure for Price Verification; adopting the 2003 Edition of NIST Handbook 133, adopting the 2004 Edition of the American Society for Testing and Materials Annual Book of ASTM Standards Section 5, Volumes 05.01 through 05.05; amending OARs pertaining to exceptions for non-computing scales and obsolete register heads LPG meters.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-027-0105

Application

The Weights and Measures Packaging and Labeling requirements for all food and nonfood commodities in package form shall be the Uniform Packaging and Labeling Regulation requirements adopted by the National Conference on Weights and Measures, as published by the U.S. Department of Commerce in its "NIST (National Institute of Standards and Technology Handbook 130 2004 Edition, entitled "Uniform Laws And Regulations in the areas of legal metrology and motor fuel quality".

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

Stat. Auth.: ORS 618
Stats. Implemented: ORS 618.016, 618.031, 618.066, 618.201, 618.211, 618.216, 618.221, 618.226, 618.231 & 618.246
Hist.: AD 1011(1-74), f. 1-7-74, ef. 1-25-74; AD 12-1984, f. & ef. 9-24-84; AD 15-1986, f. & ef. 12-19-86; 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 17-2000, f. & cert. ef. 6-14-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04

603-027-0170

Package Checking Procedures

The procedures for checking the accuracy of the net content statement on packaged goods shall be those adopted by the National Conference on Weights and Measures, and contained in the Fourth Edition of NIST Handbook 133, published by the United States Department of Commerce National Institute of Standards and Technology (NIST), January 2003 and entitled "NIST Handbook 133 Checking the Net Contents of Packaged Goods".

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

Stat. Auth.: ORS 561 & ORS 618
Stats. Implemented: ORS 618.016, 618.031, 618.066, 618.201, 618.211, 618.221 & 618.231
Hist.: AD 15-1986, f. & ef. 12-19-86; 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 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04

603-027-0180

Examination Procedures for Price Verification.

The procedures for price verification and accuracy in any store, including those that use Universal Product Code (U.P.C.) scanners and price-look-up codes at the checkout counter as a means for pricing, shall be those adopted by the National Conference on Weights and Measures, and contained in the National Institute of Standards and Technology (NIST) Handbook 130 2004 Edition, entitled "Uniform Laws And Regulations in the areas of legal metrology and engine fuel quality", subsection "Examination Procedure for Price Verification".

Stat. Auth.: ORS 561 & ORS 618
Stats. Implemented: ORS 618.016, 618.031, 618.051, 618.056, 618.066, 618.076, 618.081, 618.096, 618.201 & 618.236

Hist.: DOA 17-2000, f. & cert. ef. 6-14-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04

603-027-0206

Weights and Measures Requirements

The weights and measures requirements as to methods of sale of all food and nonfood commodities shall be the requirements adopted by the National Conference on Weights and Measures, as published by the United States Department of Commerce in its "NIST (National Institute of Standards and Technology) Handbook 130 (2004 Edition) — Uniform Regulation for the Method of Sale of Commodities."

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

Stat. Auth.: ORS 561, ORS 618 & ORS 621
Stats. Implemented: ORS 618.016, 618.031, 618.066, 618.201, 618.206, 618.226, 618.236, 618.241 & 618.246
Hist.: AD 12-1984, f. & ef. 9-24-84; AD 15-1986, f. & ef. 12-19-86; 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 17-2000, f. & cert. ef. 6-14-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04

603-027-0220

Exceptions to the National Institute of Standards and Technology Handbook 130 (2004 Edition).

The following exceptions and amendments are made to said handbook identified in OAR 603-027-206 Method of Sale of Commodities:

(1) Ready-to-Eat Food Definition. Change Section 1.12.1. Definition to read as follows: "'Ready-to-Eat Food' is restaurant-style food offered or exposed for sale without additional cooking or preparation, whether in restaurants, supermarkets, or similar food service establishments, packaged on the premises for convenience and presentation, and that is ready for consumption, though not necessarily on the premises where sold. Ready-to-Eat Food does not include sliced luncheon products, such as meat, poultry, or cheese when sold separately."

(2) Ready-to-Eat Food Methods of Sale. Change Section 1.12.2. Methods of Sale to read as follows: "Ready-to-Eat Food sold from bulk, or in servings packed on the premises, may be sold by weight, measure, or count (count includes servings) provided that:

(a) When Ready-to-Eat Foods are sold by count or measure, when such methods of sale are not customary, they shall be offered for sale by count or measure in areas of the establishment where customers would expect to find Ready-to-Eat Foods (e.g. Deli Section, Produce Section, etc.), and

(b) When Ready-to-Eat Foods are offered for sale near similar products packaged off of the premises, the Ready-to-Eat Foods shall be sold by the same method of sale as similar products."

Stat. Auth.: ORS 561 & ORS 618
Stats. Implemented: ORS 618.016, 618.031, 618.066, 618.201, 618.206, 618.211, 618.216, 618.221, 618.226, 618.231, 618.236 & 618.246

Hist.: DOA 17-2000, f. & cert. ef. 6-14-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04

603-027-0410

Definitions

(1) "Alcohol" means a volatile flammable liquid having the general formula $C_nH_{(2n+1)OH}$ used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(2) "ASTM" means The American Society for Testing and Materials, the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services; and the promotion of related knowledge. ASTM when used in these rules shall mean the 2004 Annual Book of ASTM Standards, Section 5, Volumes 05.01 through 05.05 or as amended by Federal Regulations.

(3) "Antiknock Index (AKI)" means the arithmetic average of the Research Octane Number (RON) and Motor Octane Number (MON): $AKI = (RON + MON) / 2$. This value is called by a variety of names, in addition to antiknock index, including: Octane Rating, Posted Octane, (R+M)/2 Octane.

(4) "Automotive Fuel Rating" means the automotive fuel rating determined under 16 CFR 306.5, required to be certified under 16 CFR 306.6 and 16 CFR 306.8, and required to be posted under 16 CFR 306.10. Under this Rule, sellers of liquid automotive fuels, including alternative fuels, must determine, certify, and post an appropriate automotive fuel rating. The automotive fuel rating for gasoline is the antiknock index (octane rating). The automotive fuel rating for alternative liquid fuels consists of the common name of the fuel along with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. For alternative liquid automotive fuels, a disclosure of other components,

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expressed as a minimum percentage by volume, may be included, if desired.

(5) "Automotive Gasoline, Automotive Gasoline-Oxygenate Blend" means a type of fuel suitable for use in spark-ignition automobile engines and also commonly used in marine and non-automotive applications.

(6) "Aviation Gasoline" means a type of gasoline suitable for use as a fuel in an aviation gas spark-ignition internal combustion engine.

(7) "Bulk Facility" means a facility, including pipelines terminals, refinery terminals, rail and barge terminals and associated underground and above ground tanks connected or separate, from which motor vehicle fuels are withdrawn from bulk and delivered to retail, wholesale or nonretail facilities or into a cargo tank or barge used to transport those products.

(8) "Base Gasoline" means all components other than ethanol in a blend of gasoline and ethanol.

(9) "Biodiesel" means a blend consisting of diesel fuel and a substantial amount of esterified animal fats and/or vegetable oil(s).

(10) "Cetane Index" means an approximation of the cetane number of distillate fuel, which does not take into account the effect of a cetane improver additive, calculated from the density and distillation measurements. (Ref. ASTM D 976.)

(11) "Cetane Number" means a numerical measure of the ignition performance of a diesel fuel obtained by comparing it to reference fuels in a standardized engine test. (Ref. ASTM D 613.)

(12) "Coordinating Research Council (CRC) Rating" means a standardized format for rating injector and engine deposits as developed by the CRC.

(13) "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

(14) "Dealer" means any motor vehicle fuel retailer dealer, nonretail dealer or wholesale dealer.

(15) "Director" means the Director of Agriculture.

(16) "Diesel Fuel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine.

(17) "Distillate." means any product obtained by condensing the vapors given off by boiling petroleum or its products.

(18) "EPA" means the United States Environmental Protection Agency.

(19) "E85 Fuel Ethanol" means a blend of ethanol and hydrocarbons of which the ethanol portion is nominally 75 to 85 volume percent denatured fuel ethanol (Ref. ASTM 5798).

(20) "Ethanol" means ethyl alcohol, a flammable liquid having the formula C₂H₅OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(21) "Fuel Injector Cleanliness" means a characteristic of the fuel which allows engine operation without fuel contribution to excessive injector deposits.

(22) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

(23) "Gasoline-Oxygenate Blend" means a fuel consisting primarily of gasoline along with a substantial amount (more than 0.35 mass percent oxygen, or more than 0.15 mass oxygen if methanol is the only oxygenate) of one or more oxygenates.

(24) "Lead Substitute" means an EPA-registered gasoline additive suitable, when added in small amounts to fuel, to reduce or prevent exhaust valve recession (or seat wear) in automotive spark-ignition internal combustion engines designed to operate on leaded fuel.

(25) "Lead Substitute Engine Fuel" means a gasoline or gasoline-oxygenate blend that contains a "lead substitute."

(26) "Low Sulfur" means low sulfur diesel fuel that meets ASTM D 975 (e.g., Grade Low Sulfur No. 1-D or Grade Low Sulfur No. 2-D) standards. Diesel fuel containing higher amounts of sulfur for off-road use is defined by EPA regulations.

(27) "Low Temperature Operability" means a condition which allows the uninterrupted operation of a diesel engine through the continuous flow of fuel throughout its fuel delivery system at low temperatures.

(28) "Lubricity" means the ability of diesel fuel to minimize friction between, and damage to, surfaces in relative motion under loaded conditions (Ref ASTM D 6078 and ASTM D 6079).

(29) "Methanol" means methyl alcohol, a flammable liquid having the formula CH₃OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(30) "M100 Fuel Methanol" means nominally anhydrous methyl alcohol, generally containing small amounts of additives, suitable for use as a fuel in a compression-ignition combustion engine.

(31) "M85 Fuel Methanol" means a blend of methanol and hydrocarbons of which the methanol portion is nominally 70 to 85 volume percent and which meets the requirements of ASTM D 5797.

(32) "Motor Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2700 Motor Method engine test.

(33) "Motor Vehicles" means all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances that are propelled by internal combustion engines or motors.

(34) "Motor Vehicle Fuel" means gasoline, diesel or any other liquid product used for the generation of power in an internal combustion engine, except aviation jet fuels, liquefied petroleum gases or natural gases.

(35) "Nonretail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicles fuel is dispensed through a card or key-activated fuel dispensing device to nonretail customers.

(36) "Octane Rating" means the rating of the anti-knock characteristics of a grade or type of gasoline determined by dividing by two the sum of the research octane number and the motor octane number.

(37) "Octane Rating Certification Documentation" means an invoice, bill of lading, delivery ticket, letter or other documentation that specifies the actual octane rating or a rounded rating that is the largest whole number or half of a number that is less than or equal to the number determined by or certified to the person transferring the gasoline.

(38) "Official Sample" means a motor fuel sample delivered via nozzle directly through a fuel pump, dispenser, or metering device from either a fuel delivery truck, tank wagon, above ground or below ground fuel storage tank into a suitable sealable, one litre or larger pressure-tight metal or glass container in the presence of, or drawn by, a department representative in the manner prescribed by department procedures. An official sample shall be appropriately sealed and labeled as to its identity, type, brand, grade, posted automotive fuel rating and the location, source, date, and name of official taking it at the time it is withdrawn from storage. A custody transfer receipt or record will be completed whenever an official sample changes hands enroute to a qualified motor fuel standards laboratory.

(39) "Oxygen Content of Gasoline" means the percentage of oxygen by mass contained in a gasoline.

(40) "Oxygenate" means an oxygen-containing, ashless, organic compound, such as an alcohol or ether, which can be used as a fuel or fuel supplement.

(41) "Premium Diesel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine and shall meet Standard Fuel Specifications OAR 603-027-0420(5).

(42) "Research Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2699 Research Method engine test.

(43) "Retail Dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is or offered for sale to the public.

(44) "SAE" means the Society of Automotive Engineers, a technical organization for engineers, scientists, technicians, and others in positions that cooperate closely in the engineering, design, manufacture, use, and maintainability of self-propelled vehicles.

(45) "Thermal Stability" means the ability of a fuel to resist the thermal stress which is experienced by the fuel when exposed to high temperatures in a fuel delivery system.

(46) "Unleaded" in conjunction with "engine fuel" or "gasoline" means any gasoline or gasoline-oxygenate blend to which no lead or phosphorus compounds have been intentionally added and which contains not more than 0.013 gram lead per liter (0.05 g lead per U.S. gal) and not more than 0.0013 gram phosphorus per liter (0.005 g phosphorus per U.S. gal).

(47) "Wholesale Dealer" means any person who sells motor vehicle fuel if the seller knows or has reasonable cause to believe that the buyer intends to resell the motor vehicle fuel in the same or an altered form to a retail dealer, a nonretail dealer, or another wholesale dealer.

(48) "Winter" or "Winterized" Diesel means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine which has been blended for low temperature operability and shall meet Standard Fuel Specifications OAR 603-027-0420(4).

(49) "Withdrawn From Bulk" means removed from a bulk facility for delivery directly into a cargo tank or a barge to be transported to a location other than another bulk facility for use or sale in this state.

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

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & ORS 646.905-646.990

ADMINISTRATIVE RULES

Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905-646.990 & 183
Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 20-2004, f. & cert. ef. 6-28-04

603-027-0635

Adoption of the National Institute of Standards and Technology Handbook 44

Except as provided in OAR 603-027-0640, the specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment within Oregon shall be those adopted by the National Conference on Weights and Measures, and contained in the 2004 Edition of Handbook 44, published by the U.S. Department of Commerce, entitled the "National Institute of Standards and Technology Handbook 44-Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices", which publication is by this reference hereby made a part of this rule.

[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 1056(2-75), f. 4-16-75, ef. 5-11-75; AD 6-1977, f. & ef. 3-21-77; AD 10-1979, f. & ef. 8-22-79; AD 19-1981, f. & ef. 8-21-81; 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 20-2004, f. & cert. ef. 6-28-04

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 then existing 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 non-electronic mechanical 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 240 scale divisions.

(3) Liquefied Petroleum Gas and Anhydrous Ammonia Liquid Measuring Devices Code: Section 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; DOA 20-2004, f. & cert. ef. 6-28-04

603-027-0680

Placed in Service

A weighing or measuring device shall not be used commercially in the State of Oregon until:

(1) It is licensed as required in ORS 618.121,

(2) Either:

(a) A Placed in Service Report is completed and distributed as required in OAR 603-027-0690, or

(b) Express permission is given to the device owner or operator by a representative of the Measurement Standards Division,

(3) The devices are in compliance with all applicable requirements of the 2004 Edition of the National Institute of Standards and Technology (N.I.S.T.) Handbook 44,

(4) The devices are issued an active National Type Evaluation Program (N.T.E.P.) Certificate of Conformance (CC) on the entire weighing or measuring system unless otherwise exempted,

(5) The devices are installed in accordance with the manufacturer's instructions,

(6) The devices are adjusted within applicable tolerances and not Predominantly in Favor of the device owner or operator,

(7) The devices are adjusted as closely as practicable to zero error, and

(8) Security seals are appropriately affixed to any mechanism designed to be sealed.

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

Stat. Auth.: ORS 561.190 & ORS 618
Stats. Implemented: ORS 618.031 & ORS 618.156
Hist.: DOA 26-1999, f. & cert. ef. 12-6-99; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04

603-027-0700

Responsibilities of Service Person or Service Agency

The Service person or Service Agency is responsible for placing in service, installing, repairing, and adjusting devices such that:

(1) The devices are in compliance with all applicable requirements of the 2004 Edition of the National Institute of Standards and Technology (N.I.S.T.) Handbook 44,

(2) The devices are issued an active National Type Evaluation Program (N.T.E.P.) Certificate of Conformance (CC) on the entire weighing or measuring system unless otherwise exempted,

(3) The devices are installed in accordance with the manufacturer's instructions,

(4) The devices are adjusted within applicable tolerances and not Predominantly in Favor of the device user,

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- (5) The devices are adjusted as closely as practicable to zero error,
- (6) Security seals are appropriately affixed to any mechanism designed to be sealed, and
- (7) A Placed in Service Report is completed and distributed as required in 603-027-0690.

[Publications: Publications referenced are available from the agency.]
Stat. Auth. ORS 618.031 & ORS 618.156
Stats. Implemented: ORS 618.031 & ORS 618.156
Hist.: DOA 26-1999, f. & cert. ef. 12-6-99; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04

Adm. Order No.: DOA 21-2004(Temp)
Filed with Sec. of State: 7-2-2004
Certified to be Effective: 7-2-04 thru 12-28-04
Notice Publication Date:
Rules Adopted: 603-052-1238

Subject: This temporary rule creates a *Phytophthora ramorum* compliance program for Christmas tree growers and dealers. Growers will be inspected, sampled and tested annually. Growers found to be free of *P. ramorum* will be eligible to enter into a compliance agreement with the department. Practices designed to minimize the chances of introduction of the disease are components of the compliance agreements for both growers and dealers.
Rules Coordinator: Sherry Kudna—(503) 986-4619

603-052-1238

Phytophthora ramorum Regulated Area for Christmas Trees

(1) A regulated area is established as authorized under ORS 570.305, 571.510, and 571.560 to protect Oregon from introduction of *Phytophthora ramorum* (sudden oak death, ramorum canker and blight). This pathogen causes leaf blight, dieback or death in certain trees and shrubs including tanoak, rhododendron, viburnum and camellia. Susceptible plants include species important to Oregon's Christmas tree industry.

(2) This regulated area includes the entire state of Oregon.

(3) The following definitions apply to ORS 603-052-1238:

(a) "Hosts and associated hosts" means plants on USDA's official list of *P. ramorum* hosts and associated plants, last revised April 29, 2004.

Note: This list is available online at: <http://oda.state.or.us/plant/ppd/path/SOD/index.html> or from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644.

(b) "Grower," "dealer" and "Christmas tree" are defined in ORS 571.505.

(4) All growers and dealers of Christmas trees in the regulated area shall enter into compliance agreements with the department as described in section (6). Growers and dealers who do not enter into compliance agreements with the department within 90 days of the adoption of this rule, will be prohibited from selling hosts or associated Christmas trees within the regulated area or out-of-state.

(a) Before growers can enter into a compliance agreement with the department, they must be inspected, tested and certified free of *P. ramorum*, as described in section (5).

(b) Testing is not required for dealers. Dealers are eligible to enter into a compliance agreement with the department as soon as they are able to comply with the requirements of section (6).

(5) Growers in the certification program shall be inspected and tested annually for *P. ramorum*. Inspection and sampling procedures will meet or exceed USDA standards for regulated areas not under quarantine. Fields within a five-mile radius will be considered one growing location. In cases where samples have not been taken before shearing becomes necessary, growers shall leave at least 40 un-sheared trees per growing location. These trees can be sheared once official samples have been taken. The department or USDA cooperators, using federally approved protocols, will collect and test the samples.

(6) Growers and dealers who enter compliance agreements will be required to:

(a) purchase Christmas trees and seedlings for planting only from certified sources where official *P. ramorum* certification programs acceptable to the department exist,

(b) have an official inspector inspect and test Christmas trees and seedlings for planting purchased from sources where no official certification program exists, for *P. ramorum*; these trees/seedlings must be safeguarded, segregated and held off sale until test results are complete,

(c) for growers, maintain records of all incoming and outgoing shipments of Christmas trees for a minimum of 24 months; dealers must maintain records of incoming shipments for a minimum of 24 months.

(7) Failure to comply with all articles of a compliance agreement will result in revocation of the compliance agreement and decertification.

(8) A list of growers and dealers compliant with these rules will be maintained on the department's web site. The department will update the list as necessary to maintain an accurate accounting of growers and dealers participating in the program.

(9) If *P. ramorum* is found, delimitation and eradication procedures as outlined in USDA's Confirmed Nursery Protocol, as amended April 30, 2004 will be implemented immediately.

Note: this protocol is available online at: <http://oda.state.or.us/plant/ppd/path/SOD/index.html> or from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644.

Christmas trees shall not be moved from the growing location until all conditions of the protocol are met and the department releases the plants.

(10) Violators of this rule are subject to the penalties provided by 570.410 and 570.990, including civil penalties up to \$10,000.

Stat. Auth.: ORS 570.305, 571.510, 571.560
Stats. Implemented: ORS 570.305, 571.510, 571.560
Hist.: DOA 21-2004(Temp), f. & cert. ef. 7-2-04 thru 12-28-04

Department of Community Colleges and Workforce Development Chapter 589

Adm. Order No.: DCCWD 1-2004

Filed with Sec. of State: 7-1-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 1-1-04

Rules Amended: 589-002-0100

Subject: This amendment adjusts the factors included in the formula for distributing Community College Support funds. It defines for the 2003-2005 biennium, the reimbursable full time enrollments (FTE) limit that will be used to calculate the funding for each community college.

Rules Coordinator: Laura J. Roberts—(503) 378-8648, ext. 238

589-002-0100

Distribution of Community College Support Fund

(1) Purpose Statement:

(a) It is in the state's interest to support a strong local community college system that meets local, regional and state economic and workforce development needs. Short- and long-term interests include the consideration of such things as comparable district funding capability, maintaining small districts as a means of educational access and stable, predictable funding. Oregon's community college distribution formula is designed to provide a financial foundation to support undergraduate and lower-division education, professional technical education, remedial education, local response to workforce training and other educational services necessary at the local and state level.

(b) The State Board of Education, through the authority vested in it by ORS 341.626, uses this rule to state clearly and concisely what the statewide interests are for Oregon community colleges and students through the adoption of a policy-driven distribution formula. The overarching policy levers, chosen by the State Board of Education, have been structured to support access and quality and to do so with equity for Oregon students.

(2) For purposes of this rule, the following definitions apply:

(a) "Community College Support Fund" is defined as those funds distributed by the state to the community colleges for the purpose of funding general educational programs.

(b) "Property tax revenues" is defined as the amount determined by the Department of Revenue to be imposed on local property following the application of limits imposed by sections 11(b)(1) through 11(b)(3), Article XI, of the Oregon Constitution, and those limits imposed by legislation implementing Ballot Measure 50. This amount becomes the basis for operation of the funding formula without regard to uncollectible taxes, or taxes collected from previous years. Taxes levied or imposed by a community college district to provide a public library system established prior to January 1, 1995 shall be excluded from the definition of property taxes in this rule.

(3) The Community College Support Fund shall be distributed in equal payments as follows:

(a) For the first year of the biennium, August 15, October 15, January 15, and April 15;

(b) For the second year of the biennium, August 15, October 15, and January 15;

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(c) The final payment of each biennium is deferred until July 15 of the following biennium as directed by Senate Bill 1022 of the Third Special Session of the 71st Oregon Legislative Assembly.

(d) Should any of the dates set forth above occur on a weekend, payment shall be made on the next business day.

(e) All payments made before actual property taxes imposed by each district are certified by the Oregon Department of Revenue shall be based on the Department of Community Colleges and Workforce Development's best estimate of quarterly entitlement using enrollment and property tax revenue projections. Payments shall be recalculated each year as actual property tax revenues become available from the Oregon Department of Revenue and any adjustments will be made in the final payment(s) of the fiscal year.

(4) Districts shall be required to submit enrollment reports in the format specified by the Commissioner, including numbers of clock hours realized for all coursework, in a term-end enrollment report by the Friday of the sixth week following the close of each term. If reports are outstanding at the time of the quarterly payments, payment to the district(s) not reporting may be delayed at the discretion of the Commissioner.

(5) Reimbursement from the Community College Support Fund shall be made for professional technical, lower division collegiate, developmental education and other courses approved by the State Board in accordance with OAR 589-006-0100 through 589-006-0400. State reimbursement is not available for hobby and recreation courses as defined in OAR 589-006-0400.

(6) Residents of the state of Oregon and the states of Idaho, Washington, Nevada, and California shall be counted as part of each community college's reimbursable enrollment base but only for those students who take part in coursework offered within Oregon's boundaries.

(7) Distribution of funds to community college districts from the Community College Support Fund shall be accomplished through a formula, based on the following factors:

(a) Full-time equivalent students. The formula distributes funds based on a certain amount for each full-time equivalent (FTE) student. The amount per FTE is determined by dividing the total number of reimbursable FTE into the amount of revenues available after subtracting the base payments, contracted out-of-district payments, and any other payments directed by the State Board of Education or the Legislature. For each year of the 2003-05 biennium, the number of FTE to be used in the funding formula for each college shall be:

- (A) Blue Mountain — 2,399.9
- (B) Central Oregon — 3,971.70;
- (C) Chemeketa — 11,471.17;
- (D) Clackamas — 7,610.88;
- (E) Clatsop — 1,574.77;
- (F) Columbia Gorge — 874.40;
- (G) Klamath — 1,398.43;
- (H) Lane — 12,694.05;
- (I) Linn-Benton — 6,585.59;
- (J) Mt. Hood — 9,476.40;
- (K) Oregon Coast — 497.16;
- (L) Portland — 23,913.80;
- (M) Rogue — 4,976.75;
- (N) Southwestern Oregon — 2,914.20;
- (O) Tillamook Bay — 474.38;
- (P) Treasure Valley — 1,724.74;
- (Q) Umpqua — 3,468.38;

(b) For purposes of the funding formula, 510 clock hours equals one FTE for all coursework. The Department of Community Colleges and Workforce Development shall make the calculation based on submission of FTE reports by the districts and in accordance with established FTE principles;

(c) Property tax revenues raised through voter approval of any local option or capital construction levy shall not be included in the calculation of the equalization percentage target in 9(b) as a resource to be distributed through the funding formula.

(8) State funding for community college district operations is appropriated by the legislature on a biennial basis to the Community College Support Fund. For each biennium the amount of state funds available for distribution through the funding formula shall be calculated based on the following:

(a) Funds to support contracted out-of-district (COD) programs and corrections programs shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated. The amount available for these programs shall be equal to the 2001-03 funding

amount, except as adjusted to reflect the same percentage increase or decrease realized in the overall Community College Support Fund appropriation. Each college having a COD contract shall receive a biennial appropriation equal to the same percentage share of funding it received in 2001-03, except as adjusted to reflect the same percentage increase or decrease realized in the overall Community College Support Fund appropriation; funding for individual corrections programs will be determined in consultation with the Department of Corrections.

(b) For 2003-05, \$602,565 shall be subtracted from the amount appropriated to the Community College Support Fund before the formula is calculated. These funds shall be used to support targeted investments in distributed learning activities.

(c) For 2003-05, \$1,170,000 shall be subtracted from the amount appropriated to the Community College Support Fund before the formula is calculated. These funds shall be used to support service in the portion of Hood River County annexed to Columbia Gorge Community College District effective 6/30/01.

(d) Funds remaining in the Community College Support Fund shall be divided equally between the two years of the biennium.

(9) The funds available for formula distribution are determined by taking the state funds calculated in (8)(d) of this rule and shall be distributed in the following manner:

(a) For 2004-05, each community college district shall receive a base payment of \$600 for each FTE up to 1,100 for fiscal year 2004-05, and \$300 per FTE for unrealized enrollments between actual enrollment numbers and 1,100 FTE. The base payment shall be adjusted by the State Board of Education each biennium, beginning 2005-07. The base payment for each district will be adjusted according to the size of the district. District size for purposes of this adjustment will be determined each year by the FTE set forth in section (7)(a)(A) through (Q) of this rule. The base payment adjustments shall be:

- (A) 0 — 750 FTE 1.3513;
- (B) 751 — 1,250 FTE 1.2784;
- (C) 1,251 — 1,750 FTE 1.2062;
- (D) 1,751 — 2,250 FTE 1.1347;
- (E) 2,251 — 2,750 FTE 1.0641;
- (F) 2,751 — 3,250 FTE 1.0108;
- (G) 3,251 — 3,750 FTE 1.0081;
- (H) 3,751 — 4,250 FTE 1.0054;
- (I) 4,251 — 4,999 FTE 1.0027;
- (J) 5,000 or more FTE 1.000.

(b) For 2004-05, each district will receive from state funds an amount necessary to bring it to an equalization percentage target of the prior year's highest property tax revenue per FTE received by any district. For 2004-05, the equalization percentage target is 55 percent. An allocation of state dollars will be made to a district, if necessary, to bring every district up to 55 percent of the prior years' highest property tax revenue per FTE received by any district. Districts with property tax revenues above 55 percent of the of the prior year's highest property tax revenue per FTE received by any district, will receive no state funds under this component. All districts will continue to retain all property tax revenues generated in the district. Each prior year's FTE, for the purposes of this adjustment, will be determined by the FTE set forth in section (7)(a)(A) through (Q) of this rule.

(c) All remaining funds shall be distributed on a per FTE basis. The amount of funding for each FTE shall be determined by dividing the formula resources available by the total number of FTE included in the formula.

(d) Hold Harmless: For 2004-05 only, for districts for which the above distribution results in a decrease in State funding from the amount received in 2003-04, the increase received by the other districts will be proportionally reduced to provide State funding for those districts equivalent to what they received in 2003-04.

(e) The sum of (9)(a) (9)(b), (9)(c) and (9)(d) shall be the funding available to each community college district for 2004-05.

(10) State general fund and local property taxes for territories annexed or formed effective June 1, 1996, or later shall not be included in the funding formula for the first three years of service. Additionally, the FTE generated in newly annexed territories shall not impact the funding formula during the first three years of service. Beginning in the fourth year, funding will be distributed through the formula as outlined in this rule with the following adjustments.

Stat. Auth.: ORS 326.051 & ORS 341.626
Stats. Implemented: ORS 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665
Hist.: IEB 9-1979, f. & ef. 6-11-79; EB 12-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0260; ODE 27-2000, f. & cert. ef. 10-30-00; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-041-0200; DCCWD 2-2001, f. & cert. ef. 5-7-01; DCCWD 3-

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2002, f. & cert. ef. 6-5-02; DCCWD 7-2002(Temp), f. & cert. ef. 12-16-02 thru 6-5-03; DCCWD 3-2003, f. & cert. ef. 5-14-03; DCCWD 1-2004, f. & cert. ef. 7-1-04

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

Adm. Order No.: BCD 8-2004
Filed with Sec. of State: 6-21-2004
Certified to be Effective: 7-1-04
Notice Publication Date: 5-1-04

Rules Adopted: 918-001-0031, 918-030-0320, 918-030-0325
Subject: 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."

Rules Coordinator: Richard J. Baumann—(503) 373-7559

918-001-0031

Extension of time limits created in Administrative Rules

(1) The Building Codes Division may extend specified time requirements stated in ORS chapter 183 if the person seeking the extension shows good cause for failing to meet the time requirement stated by the applicable rule. A request for an extension of any time requirement must be submitted in writing within a reasonable time.

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

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

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

Stat. Auth.: ORS 183.415
Stats. Implemented: ORS 183.415
Hist.: BCD 8-2004, f. 6-21-04, cert. ef. 7-1-04

918-030-0320

Purpose of the Rules

ORS 25.785 requires the Building Codes Division and its appropriate advisory boards to record an applicant's social security number in order to issue or renew a license, certification or registration subject to suspension under ORS 25.750 to 25.783. These rules establish requirements and procedures for applicants with or without social security numbers issued by the United States Social Security Administration to provide a social security number or a statement indicating that the applicant does not have a social security number.

Stat. Auth.: ORS 25.785, 446.210, 446.400, 455.457, 460.085, 479.630, 479.910, 480.630, 693.050
Stats. Implemented: ORS 25.785
Hist.: BCD 8-2004, f. 6-21-04, cert. ef. 7-1-04

918-030-0325

Requirements and Procedures

(1) The Building Codes Division will not issue or renew a license, certification or registration subject to suspension under ORS 25.750 to 25.783 unless an applicant provides his or her social security number on the application or renewal form. Applicants do not need to provide their social security number on applications for renewal if the applicant previously provided their social security number to the division and it is in the record.

(2) The Building Codes Division may accept a written statement to fulfill the requirements of section (1) from an applicant who has not been issued a social security number by the United States Social Security Administration. Applicants do not need to provide this statement with the application for renewal if the applicant previously provided this statement to the division and it is in the record. Any written statement submitted must:

(a) Be signed by the applicant; and

(b) Attest to the fact that a social security number has not been issued to the applicant by the United States Social Security Administration.

Stat. Auth.: ORS 25.785, 446.210, 446.400, 455.457, 460.085, 479.630, 479.910, 480.630, 693.050
Stats. Implemented: ORS 25.278
Hist.: BCD 8-2004, f. 6-21-04, cert. ef. 7-1-04

Adm. Order No.: BCD 9-2004
Filed with Sec. of State: 6-21-2004
Certified to be Effective: 7-1-04
Notice Publication Date: 5-1-04

Rules Amended: 918-225-0691, 918-225-0920
Rules Repealed: 918-225-0691(T), 918-225-0920(T)
Subject: 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.
Rules Coordinator: Richard J. Baumann—(503) 373-7559

918-225-0691

Boiler, Pressure Vessel and Pressure Piping Installation, Alteration or Repair Certification Requirements

Persons installing, altering or repairing boilers and pressure vessels shall be certified under these rules and may only work within the scope of their certification.

(1) Persons desiring to obtain certification under these rules shall:

- Meet the qualifications for that certification;
- Apply on a division form; and
- Pay the appropriate fee.

(2) An applicant may request the Board of Boiler Rules to approve alternate verification of training and work experience on a case-by-case basis when required by the certifications in sections (5) through (10) of this rule.

(3) Definitions. For the purpose of this rule:

(a) "Direct Supervision" means the person supervised is in the physical presence of a qualified certified person at the job site and the person doing the supervision is directly assigned to monitor and direct the activities of the person supervised;

(b) "Qualified Certified Person" means a person who holds a Class 2, 3, 4, 5, 5-A or 5-B certification and is authorized to do the work involved without supervision;

(c) "Supervision" means the individual person assigned to perform supervision under section (10) of this rule is directly and specifically assigned to monitor and direct the activities of the person being supervised. Both the person performing supervision and those being supervised shall be prepared to identify each other.

(d) "Verifiable" means the matter asserted by an applicant for certification is corroborated by independent evidence or by the sworn statements of others with actual knowledge.

(4) Class 1 Trainee/Helper Certification. A person holding this certification may install, alter or repair boilers, pressure vessels and pressure piping providing the work is of a mechanical nature only. Work performed shall be under the direct supervision of a qualified certified person. Direct supervision must be on a ratio of one qualified certified person to one trainee/helper. No ASME Code welding is permitted. This certification has no fixed or limited duration. A person may be permanently certified under this category. There are no minimum qualifications required for applicants to obtain this certification.

(5) Class 2 Pressure Vessel Installer Certification. A person holding this certification may install or repair unfired pressure vessels by any non-welded method of attachment.

(a) There are no minimum qualifications required to obtain this certification. Applicants shall pass an examination testing the applicant's knowledge of the Boiler and Pressure Vessel Law, ORS 480.510 to 480.665; OAR chapter 918, division 225; and American Society of Mechanical Engineers, Boiler and Pressure Vessel Code, Section VIII, Division 1, General Requirements.

(b) Persons who install refrigeration process equipment assembled and sold as a modular unit by the manufacturer and who do not attach piping to a pressure vessel during the installation are exempt from this rule. To qualify for this exemption, the attachment shall be made by any method other than fusion welding.

(6) Class 3 Building Service Mechanic Certification. A person holding this certification may install or repair boilers (including boiler and non-

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boiler external piping) and unfired pressure vessels by a non-welded method of attachment. Applicants shall:

(a) Have at least 2,000 hours of verifiable experience installing and repairing boilers;

(b) Pass an examination testing the applicants knowledge of:

(A) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665; OAR chapter 918, division 225; and the general requirements of the **American Society of Mechanical Engineers, Boiler and Pressure Vessel Code, Sections I, IV and VIII, and CSD-1;**

(B) The State of Oregon Boiler Safety Program Study Guide;

(C) Building Service Systems (Hydronics) for boilers and related appurtenances, **American Society of Mechanical Engineers/ASME B31.1 Power Piping and B31.9 Building Service Piping;** and

(D) Structural and mechanical blueprints with the ability to interpret specifications.

(7) Class 4 Boilermaker Certification. A person holding this certification may install, alter or repair boilers and pressure vessels (excluding non-boiler external piping) by welding or other methods of attachment. Applicants shall:

(a) Have 2,000 hours of verifiable experience doing welding and 2,000 hours of verifiable experience doing non-welding applications involving boilers or pressure vessels. The verification must cover welding and non-welding applications separately; and

(b) Pass an examination testing the applicant's knowledge of:

(A) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665; OAR chapter 918, division 225; and the general requirements of the **American Society of Mechanical Engineers, Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII and IX, CSD-1, B31.1 and B31.9;**

(B) General boilermaker skills and procedures;

(C) Blueprint reading, layout and shop mathematics;

(D) Interpreting plans and specifications covering installation, alteration, repair, fabrication and erection of boilers and pressure vessels;

(E) Welding process, metallurgy and other procedures particularly applicable to boilers and pressure vessels; and

(F) The State of Oregon Boiler Safety Program Study Guide.

(c) Class 4 Boilermakers may also perform the scope of work allowed under section (8) of these rules providing;

(A) Work may only be done under the supervision of a qualified certified person under section (8) of these rules; and

(B) Prior to any welding, the individual must qualify to supervisor's employer's welding procedures.

(8) Class 5 Pressure Piping Mechanic Certification. A person holding this certification may:

(a) Fabricate, install, alter and repair pressure piping;

(b) Install boilers and pressure vessels by attachment of piping connections; and

(c) Install, assemble and repair cast iron sectional boilers.

(A) Applicants shall have a minimum of 2,000 hours of verifiable experience performing pipe-welding on **ASME B31** pressure piping and 2,000 hours of verifiable experience performing work on pressure piping and boilers; and

(B) Pass an examination testing the applicant's knowledge of:

(i) **American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Sections I and IV, CSD-1 and B31 Pressure Piping;**

(ii) Structural and mechanical blueprints with the ability to interpret specifications;

(iii) Pressure piping systems and controls;

(iv) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665 and OAR chapter 918, division 225;

(v) The State of Oregon Boiler Safety Program Study Guide; and

(vi) Welding and brazing processes, heat treatment, metallurgy and other procedures applicable to pressure piping systems.

(d) Class 5 Pressure Piping Mechanics may also perform the scope of work allowed under section (7) of these rules providing;

(A) Work may only be done under the supervision of a qualified certified person under section (7) of these rules; and

(B) Prior to any welding, the individual must qualify to supervisor's employer's welding procedures.

(9) Class 5-A Process Piping Mechanic Certification. A person holding this certification may fabricate, install, alter or repair **B31.3** process piping. Applicants shall:

(a) Have a minimum of 2,000 hours of verifiable experience performing pipe-welding or brazing on B31.3 process piping and 2,000 hours of verifiable experience performing work on pressure piping; and

(b) Pass an examination testing the applicant's knowledge of:

(A) **American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section B31.3;**

(B) Structural and mechanical blueprints with the ability to interpret specifications;

(C) Pressure piping controls;

(D) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665 and OAR chapter 918, division 225; and

(E) Welding, brazing, chemical bonding procedures, heat treatment, metallurgy and other procedures applicable to pressure piping systems.

(10) Class 5-B Refrigeration Piping Mechanic Certification. A person holding this certification may fabricate, install, alter or repair **B31.5** refrigeration piping. Applicants shall:

(a) Have a minimum of 2,000 hours of verifiable experience performing pipe-welding or brazing on B31.5 refrigeration piping and 2,000 hours of verifiable experience performing work on pressure piping; and

(b) Pass an examination testing the applicant's knowledge of:

(A) **American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section B31.5;**

(B) Structural and mechanical blueprints with the ability to interpret specifications;

(C) Pressure piping controls;

(D) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665 and OAR chapter 918, division 225; and

(E) Welding, brazing, heat treatment, metallurgy and other procedures applicable to pressure piping systems.

(11) Class 6 Welder Certification. A person holding this certification may weld on boilers, pressure vessels or pressure piping while employed by an approved welding employer. Work may only be performed under the supervision of a person certified under sections (7) through (10) of this rule as applicable. More than one welder may be supervised by one appropriately qualified certified person under this certification.

(a) A Class 6 Welder may also perform the scope of work under section (4) of this rule providing the work performed is under the direct supervision of a qualified certified person under sections (5) through (10) of these rules.

(b) Applicants shall be qualified as a welder in accordance with the **American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section IX, Part QW**. The employer shall attest in writing that the applicant is qualified under that code section and is currently qualified to that employer's welding procedures. This written statement is not transferable to another employer.

(12) Certifications may be renewed annually providing the person is in good standing and:

(a) Completes 8 hours of division-approved continuing education; and

(b) Pays renewal fee.

(13) Class 1 Trainee/Helpers and Class 6 Welders are exempt from the continuing education requirements.

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

Stat. Auth.: ORS 480.545 & 480.630

Stats. Implemented: ORS 480.630

Hist.: BCD 7-2003, f. 3-14-03, cert. ef. 7-1-03; BCD 13-2003, f. 6-26-03, cert. ef. 7-1-03;

BCD 3-2004(Temp), f. & cert. ef. 3-8-04 thru 9-3-04; BCD 9-2004, f. 6-21-04, cert. ef. 7-1-04

918-225-0920

Program Approval Procedure

(1) Applications for program approval shall include:

(a) The name and description of the program;

(b) A program outline, including a process for student evaluation;

(c) The name, address and telephone number of the contact person;

(d) The proposed instructor and instructor qualifications;

(e) A class schedule (date, time and location);

(f) A list or sample of program materials;

(g) Credit hours requested;

(h) Any limitations on who can attend and, if open to the public, the fee; and

(i) Agreement for division monitoring and evaluation. Upon request by the division, attendees will be requested to make program and instructor evaluations.

(2) The division shall report programs approved or denied to the board.

(3) Unless otherwise stated, program and instructor approvals shall be effective for one calendar year. Subsequent applications for the same program may incorporate by reference all or part of the original application.

Stat. Auth.: ORS 480.630

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Stats. Implemented: ORS 480.630
Hist.: BCD 2-2003, f. & cert. ef. 2-3-03; BCD 3-2004(Temp), f. & cert. ef. 3-8-04 thru 9-3-04; BCD 9-2004, f. 6-21-04, cert. ef. 7-1-04

**Department of Consumer and Business Services,
Workers' Compensation Board
Chapter 438**

Adm. Order No.: WCB 1-2004
Filed with Sec. of State: 6-23-2004
Certified to be Effective: 9-1-04
Notice Publication Date: 4-1-04

Rules Adopted: 438-012-0017, 438-012-0110, 438-015-0011
Rules Amended: 438-005-0040, 438-005-0050, 438-005-0055, 438-009-0010, 438-009-0015, 438-012-0018, 438-012-0020, 438-012-0030, 438-012-0032, 438-012-0035, 438-012-0055, 438-012-0060, 438-012-0090, 438-012-0095, 438-012-0100, 438-022-0005, 438-022-0010

Subject: Permanent amendments to Rules of Practice and Procedures under the Workers' Compensation Law regarding the submission and approval of settlement stipulations, rulemaking procedures, adoption of a rule requiring "English language" retainer agreements, and amendment of several procedural and substantive Own Motion rules.

Rules Coordinator: Vicky Scott—(503) 378-3308

438-005-0040

General Definitions

(1) "Administrative Law Judge" means an individual appointed by the Board to perform the duties, functions and powers provided in ORS 654, 655 and 656, and such other duties, functions and powers as may be prescribed by the Board.

(2) "Aggravation" means an actual worsening of the compensable condition(s) after the last award or arrangement of compensation, which is established by medical evidence supported by objective findings, and otherwise satisfies the statutory requirements of ORS 656.273.

(3) "Aggravation rights" means the time periods specified in ORS 656.273 during which an injured worker is entitled to additional compensation for worsened conditions as a matter of right.

(4) "Board" means the Workers' Compensation Board.

(5) "Claimant" means an injured worker or any other person entitled to initiate or continue a claim for compensation.

(6) "Director" means the Director of the Department of Consumer & Business Services or his/her designee.

(7) "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation.

(8) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(9) "Insurer" means the State Accident Insurance Fund Corporation, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in this state, or, except where the context requires otherwise, an assigned claims agent in cases under ORS 656.054.

(10) "Party" means a claimant, an employer, including a noncomplying employer, an assigned claims agent in cases under ORS 656.054, and an insurer.

(11) "Self-insured employer" means an employer or group of employers certified under ORS 656.430 as meeting the qualifications set out in ORS 656.407.

(12) "Workers' Compensation Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.726(5) & ORS 656.054

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 3-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-005-0050

Notice of Claim Acceptance and Hearing Rights under ORS 656.262(6)(d)

(1) Every notice of claim acceptance shall include all of the information prescribed by ORS 656.262(6)(b) and OAR chapter 436.

(2) In the event that the insurer or self-insured employer disagrees with all or any portion of a worker's objections to a notice of claim acceptance under ORS 656.262(6)(d), the insurer's or self-insured employer's

written response shall specify the reasons for the disagreement, and shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU DISAGREE WITH THIS DECISION, YOU MAY FILE A LETTER WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM, OREGON 97302-1282. YOUR LETTER SHOULD STATE THAT YOU WANT A HEARING, YOUR ADDRESS, THE DATE OF YOUR INJURY, AND YOUR CLAIM NUMBER.

"IF YOUR CLAIM QUALIFIES, YOU MAY RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE IN OREGON 1-800-452-0288 OR IN SALEM OR FROM OUTSIDE OREGON AT (503) 945-7585."

Stat. Auth.: ORS 656.307, 656.388, 656.593 & 656.726(4)

Stats. Implemented: ORS 656.262(6)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-005-0055

Notice of Claim Denial and Hearing Rights

(1) Except for a denial issued under ORS 656.262(15), in addition to the requirements of ORS 656.262, the notice of denial shall specify the factual and legal reasons for denial, and shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU THINK THIS DENIAL IS NOT RIGHT, WITHIN 60 DAYS AFTER THE MAILING OF THIS DENIAL YOU MUST FILE A LETTER WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1282. YOUR LETTER MUST STATE THAT YOU WANT A HEARING, YOUR ADDRESS AND THE DATE OF YOUR ACCIDENT IF YOU KNOW THE DATE. IF YOUR CLAIM QUALIFIES, YOU MAY RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. IF YOU DO NOT FILE A REQUEST WITHIN 60 DAYS, YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO COMPENSATION UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS. AFTER 180 DAYS ALL YOUR RIGHTS WILL BE LOST. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES.

IF YOU MAKE A TIMELY REQUEST FOR HEARING ON A DENIAL OF COMPENSABILITY OF YOUR CLAIM AS REQUIRED BY ORS 656.319(1)(a) THAT IS BASED ON ONE OR MORE REPORTS OF EXAMINATIONS CONDUCTED AT THE REQUEST OF THE INSURER OR SELF-INSURED EMPLOYER UNDER ORS 656.325(1)(a) AND YOUR ATTENDING PHYSICIAN DOES NOT CONCUR WITH THE REPORT OR REPORTS, YOU MAY REQUEST AN EXAMINATION TO BE CONDUCTED BY A PHYSICIAN SELECTED BY THE DIRECTOR. THE COST OF THE EXAMINATION AND THE EXAMINATION REPORT SHALL BE PAID BY THE INSURER OR SELF-INSURED EMPLOYER. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE IN OREGON 1-800-452-0288 OR IN SALEM OR FROM OUTSIDE OREGON AT (503) 947-7585."

(2) If an insurer or self-insured employer intends to deny a claim under ORS 656.262(15) because of a worker's failure to cooperate in the investigation of the claim, in addition to the requirements of ORS 656.262, the notice of denial shall specify the factual and legal reasons for denial, and shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU THINK THIS DENIAL IS NOT RIGHT, WITHIN 60 DAYS AFTER THE MAILING OF THIS DENIAL YOU MUST FILE A LETTER WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1282. YOUR LETTER MUST STATE THAT YOU WANT AN EXPEDITED HEARING, YOUR ADDRESS AND THE DATE OF YOUR ACCIDENT IF YOU KNOW THE DATE. YOU WILL RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. IF YOU DO NOT FILE A REQUEST WITHIN 60 DAYS, YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO COMPENSATION UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS. AFTER 180 DAYS ALL YOUR RIGHTS WILL BE LOST. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE IN OREGON 1-800-452-0288 OR IN SALEM OR FROM OUTSIDE OREGON AT (503) 947-7585."

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.262(6), ORS 656.262(15) & ORS 656.325

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-009-0010

Disputed Claim Settlements

(1) Any document submitted for approval by the Board or the Hearings Division as a settlement of a denied or disputed claim shall be in the form specified by this rule.

(2) A disputed claim settlement shall recite, at a minimum:

(a) The date and nature of the claim;

(b) That the claim has been denied and the date of the denial;

(c) That a bona fide dispute as to the compensability of all or part of the claim exists and that the parties have agreed to compromise and settle all or part of the denied and disputed claim under the provisions of ORS 656.289(4);

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- (d) The factual allegations and legal positions in support of the claim;
- (e) The factual allegations and legal positions in support of the denial of the claim;
- (f) That each of the parties has substantial evidence to support the factual allegations of that party;

(g) A list of medical service providers who shall receive reimbursement in accordance with ORS 656.313(4), including the specific amount each provider shall be reimbursed, and the parties' acknowledgment that this reimbursement allocation complies with the reimbursement formula prescribed in ORS 656.313(4)(d); and

(h) The terms of the settlement, including the specific date on which those terms were agreed.

(3) If an accepted claim is later denied entirely at any time based on fraud, misrepresentation or other illegal activity by the worker, the disputed claim settlement shall further recite the specific factual allegations and legal positions of the parties concerning the fraud, misrepresentation or other illegal activity.

(4) If a claim was previously accepted in good faith but later denied, in whole or in part, based on later obtained evidence that the claim is not compensable or evidence that the paying agent is not responsible for the claim, the disputed claim settlement shall further recite:

(a) If the accepted claim is later denied entirely at any time up to two years from the date of claim acceptance, an allegation that the self-insured employer or insurer has obtained later evidence that the claim is not compensable or that the paying agent is not responsible for the claim; or

(b) If the denial is a denial of aggravation, current need for medical services or a partial denial of a medical condition on the ground that the condition is not related to the accepted injury, that the claimant retains all rights that may later arise under ORS 656.245, 656.273, 656.278 and 656.340, insofar as these rights may be related to the original accepted claim.

(5) If the claimant is unrepresented, the denial of the claim which is being settled by any document described in section (1) of this rule shall not be contained within that document, but rather shall be issued separately. In addition, any document described in section (1) of this rule shall recite that the unrepresented claimant has been orally advised of the following matters:

(a) The right to an attorney of the claimant's choice at no cost to the claimant for attorney fees;

(b) The existence of the office of the Ombudsman pursuant to ORS 656.709;

(c) Except with the consent of the worker, reimbursement made to medical service providers from the proceeds of a disputed claim settlement shall not exceed 40 percent of the total present value of the settlement amount; and

(d) Reimbursement from the proceeds of a disputed claim settlement made to medical service providers shall not prevent a medical service provider or health insurance provider from recovering the balance of amounts owing for such services directly from the worker.

(6) Any document described in section (1) of this rule shall also recite that the claimant has been orally advised that:

(a) The claimant has the right to request a hearing concerning the claim, after which an Administrative Law Judge will determine whether the claimant will receive workers' compensation benefits;

(b) If, following the hearing, the claim is finally determined compensable, the claimant would be entitled to workers' compensation benefits, which could include temporary disability, permanent disability, medical treatment, and vocational rehabilitation;

(c) If, following the hearing, the claim is finally determined not compensable, the claimant would not be entitled to workers' compensation benefits;

(d) As a result of this agreement, the claimant's rights to seek workers' compensation benefits concerning this claim would be extinguished;

(e) Both parties agree that the terms of the agreement are reasonable; and

(f) The agreement shall not be binding upon the parties unless and until the agreement is approved by an Administrative Law Judge or the Board, depending upon which forum is considering the dispute.

(7) No document described in section (1) of this rule shall be approved unless the document submitted by the parties establishes that a bona fide dispute as to compensability exists and the proposed disposition of the dispute is reasonable. If an Administrative Law Judge or the Board is not satisfied that a bona fide dispute exists or that disposition of the dispute is reasonable, the Administrative Law Judge or Board may reject the agreement or specify the manner in which objection(s) can be cured.

(8) All disputed claim settlements shall recite whether a claim disposition agreement in the claim has been filed for approval by the Board. All disputed claim settlements shall be in a separate document from a claim disposition agreement.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.236, ORS 656.289(4) & ORS 656.313(4)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 5-1990, f. 4-19-90, cert. ef. 5-21-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 3-1993, f. 10-27-93, cert. ef. 11-4-93; WCB 2-1995, f. 11-13-96, cert. ef. 1-1-96; WCB 3-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-009-0015

Notice of Settlement; Submission of Documents

(1) The party that requested the hearing shall promptly notify the Presiding Administrative Law Judge, or his or her delegate, when a case is settled in whole or in part.

(2) The party that requested Board review shall promptly notify the Board's Closing and Appeals Division in writing when a case is settled in whole or in part.

(3) The Presiding Administrative Law Judge, or his or her delegate, may require written notice of settlement as a condition of cancellation of a scheduled hearing.

(4) With the consent of the assigned Administrative Law Judge, the parties may enter a settlement on the oral record at the time and place scheduled for the hearing. With the exception of a disputed claim settlement, the Administrative Law Judge may enter an order reciting and approving the settlement in such cases, without the submission of documents by the parties. With the consent of the parties, the official oral record, including the Administrative Law Judge's approval, which is subject to transcription if necessary, is sufficient authority for the payment of settlement amounts in advance of the formal written order.

(5) Notwithstanding OAR 438-005-0046(1)(d), in all cases settled by disputed claim settlement or written stipulation of the parties, the original and one legible copy of the settlement document shall be mailed or delivered to the Administrative Law Judge or the Board for approval. If the disputed claim settlement or written stipulation pertains to the resolution of disputes pending before both the Hearings Division and the Board, the settlement document shall recite the issues resolved by the Opinion and Order that is pending before the Board. If the disputed claim settlement or written stipulation is mailed or delivered to the Hearings Division for approval and the agreement either formally or effectively modifies a dispute which is pending before the Board, the disputed claim settlement or stipulation shall be submitted in a format to provide for both Hearings Division and Board approval.

(6) Unless a party has filed prior written notice with the Hearings Division or the Board that the party wants an exhibit returned to them, all exhibits (with the exception of exhibit lists) may be discarded from the record following:

(a) Administrative Law Judge or Board approval of a settlement stipulation or disputed claim settlement;

(b) An Administrative Law Judge order dismissing a party's hearing request in response to that party's withdrawal of the request; or

(c) A Board order dismissing a party's request for Board review in response to that party's withdrawal of the request for Board review.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.236, ORS 656.289(4) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1990, f. 1-24-90, cert. ef. 2-28-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 3-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-012-0017

Written Argument and Other Documents

(1) Timely compliance with Board requests for written argument and/or timely responses to inquiries from the Board is necessary to the Board's decision making process.

(2) Unless otherwise allowed by the Board, extensions of time for the filing of written arguments/responses will be allowed only on written request filed no later than the date the argument/response is due. A statement whether opposing counsel (or a party, if the party is not represented by counsel) objects to, concurs in or has no comment regarding the extension of time requested should be furnished with the extension request.

Stat. Auth.: ORS 656.278 & ORS 656.726(5)

Stats. Implemented: ORS 656.278(1) & ORS 656.726(5)

Hist.: WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

ADMINISTRATIVE RULES

438-012-0018

Applicability of Rules; Effective Date

(1) These rules apply to claims in which a request for compensation under the Board's Own Motion jurisdiction is in existence or arose on or after the effective date of these rules.

(2) These rules in division 012 are effective September 1, 2004, to be applied in the manner prescribed in the Board's Order of Adoption.

Stat. Auth.: ORS 656.278 & ORS 656.726(5)

Stats. Implemented: ORS 656.278(1) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 8-1990(Temp), f. 8-23-90, cert. ef. 9-15-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-012-0020

Insurer to Process Own Motion Claim: Notice and Contents of Claim; Worsened Condition Claim; "Post-aggravation Rights" New Medical Condition or Omitted Medical Condition Claim; Pre-1966 Injury Claim

(1) All Own Motion claims, including "post-aggravation rights" new medical condition or omitted medical condition claims, shall first be directed to and processed by the insurer. An Own Motion claim shall be legibly date-stamped on the date it is received by the insurer.

(2) An Own Motion claim shall contain sufficient information to identify the claimant and the claim.

(3) An insurer is deemed to have notice of an Own Motion claim for a worsened condition when one of the following documents is submitted to the insurer by or on behalf of the claimant:

(a) A written request for temporary disability compensation or claim reopening regarding a compensable injury for which aggravation rights have expired; or

(b) Any document submitted to the insurer after the expiration of aggravation rights that reasonably notifies the insurer that the compensable injury results in the claimant's inability to work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work.

(4) An insurer is deemed to have notice of a "post-aggravation rights" new medical condition or omitted medical condition claim when the insurer receives from the claimant any document that clearly requests formal written acceptance of a new medical condition or an omitted medical condition initiated after expiration of aggravation rights under ORS 656.273 as required by ORS 656.267(1) and (3).

(5) Except as provided in section (7) of this rule, an insurer is deemed to have notice of an Own Motion claim for medical benefits and/or temporary disability compensation relating to a compensable injury that occurred before January 1, 1966, when one of the following documents is submitted to the insurer by or on behalf of the claimant:

(a) A written request for medical benefits relating to the compensable injury;

(b) Any document that reasonably notifies the insurer that the claimant is seeking medical benefits for the compensable injury;

(c) A written request for temporary disability compensation or claim reopening; or

(d) Any document that reasonably notifies the insurer that the compensable injury results in the inability of the claimant to work and requires surgery or hospitalization or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work.

(6) An insurer is deemed to have notice of a "post-aggravation rights" new medical condition or omitted medical condition claim related to a compensable injury that occurred before January 1, 1966, when the insurer receives from the claimant any document that clearly requests formal written acceptance of a new medical condition or an omitted medical condition initiated after expiration of aggravation rights under ORS 656.273 as required by ORS 656.267(1) and (3).

(7) An Own Motion claim for medical benefits does not include a claim for medical benefits relating to a compensable injury that occurred from August 5, 1959 through December 31, 1965 and resulted in an award of permanent total disability. Such claims shall be processed as a claim for medical services under ORS 656.245.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented.: ORS 656.278(2) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-012-0030

Insurer Recommendation of Reopening or Denial of Claim Voluntarily Reopening

(1) For all Own Motion claims, including "post-aggravation rights" new medical condition or omitted medical condition claims, with a date of injury before January 1, 2002, except as provided in section (4) of this rule, the Own Motion insurer shall, within 90 days after receiving an Own Motion claim, either:

(a) Voluntarily reopen the Own Motion claim, including any "post-aggravation rights" new medical condition or omitted medical condition claim, under ORS 656.278(5) to provide benefits allowable under ORS 656.278 or to grant additional medical or hospital care to the claimant; or

(b) Submit to the Board a written recommendation as to whether the Own Motion claim, including any "post-aggravation rights" new medical condition or omitted medical condition claim, should be reopened or not reopened, on a form prescribed by the Board, accompanied by the required evidence supporting the recommendation. The Own Motion insurer shall supply all information and evidence required by the form, which should be marked as exhibits, arranged in chronological order, and accompanied by an exhibit list. Copies of the recommendation form and any supporting evidence shall be mailed to the claimant and the claimant's attorney, if any.

(2) For all Own Motion claims, including "post-aggravation rights" new medical condition or omitted medical condition claims, with a date of injury on or after January 1, 2002, except as provided in section (4) of this rule, the Own Motion insurer shall, within 60 days after receiving an Own Motion claim, either:

(a) Voluntarily reopen the Own Motion claim, including any "post-aggravation rights" new medical condition or omitted medical condition claim, under ORS 656.278(5) to provide benefits allowable under ORS 656.278 or to grant additional medical or hospital care to the claimant; or

(b) Submit to the Board a written recommendation as to whether the Own Motion claim, including any "post-aggravation rights" new medical condition or omitted medical condition claim, should be reopened or not reopened, on a form prescribed by the Board, accompanied by the required evidence supporting the recommendation. The Own Motion insurer shall supply all information and evidence required by the form, which should be marked as exhibits, arranged in chronological order, and accompanied by an exhibit list. Copies of the recommendation form and any supporting evidence shall be mailed to the claimant and the claimant's attorney, if any.

(3) For "post-aggravation rights" new medical condition or omitted medical condition claims, in addition to the processing required in OAR 438-012-0024, the Own Motion insurer must also comply with subsections (1) and (2) of this rule; i.e., either voluntarily reopen the claim or submit to the Board a written recommendation as to whether the "post-aggravation rights" new medical condition or omitted medical condition claim should be reopened or not reopened, on a form prescribed by the Board, accompanied by the required evidence supporting the recommendation.

(4) In extraordinary circumstances, the Board may grant the insurer an extension for submission of its recommendation.

(5) In all cases when the Own Motion insurer voluntarily reopens the claim under ORS 656.278(5), the insurer shall issue a 3501 Form to the claimant with copies to the claimant's attorney, if any, and the Workers' Compensation Division. The form shall be as prescribed by the Director.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.278(1), ORS 656.278(5) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-012-0032

Consent to Designation of Paying Agent

(1) Except as provided in section (2) of this rule, when the Workers' Compensation Division notifies the Board that it is prepared to issue an order designating a paying agent under ORS 656.307 and OAR 436-060-0180 if the Board consents to the order where one or more insurers involved in the proceeding is subject to ORS 656.278, the Board shall notify the Benefits Section within ten days whether it consents to the order.

(2) If the Board is unable to determine from the available evidence whether the claimant would be entitled to Own Motion relief if the Own Motion insurer was determined to be the responsible insurer, the Board may require the parties to state their positions in writing and submit any supporting evidence to the Board within ten days. The time for the Board's response to the Workers' Compensation Division is suspended during this process.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(4)

Stats. Implemented: ORS 656.278(1) & ORS 656.307

ADMINISTRATIVE RULES

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-012-0035

Temporary Disability Compensation

(1) The insurer may pay temporary disability compensation in accordance with the provisions of ORS 656.210, 656.212(2) and 656.262(4) from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery, or other curative treatment until the claimant's condition becomes medically stationary in those cases where:

(a) The Own Motion claim for temporary disability compensation is filed after the aggravation rights have expired;

(b) There is a worsening of a compensable injury that results in the inability of the worker to work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work; and

(c) The claimant qualifies as a "worker" pursuant to ORS 656.005(30). "Worker" does not include a person who has withdrawn from the work force during the period for which such benefits are sought.

(2) The insurer may pay temporary disability compensation in accordance with the provisions of ORS 656.210, 656.212(2) and 656.262(4) from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery, or other curative treatment until the claimant's condition becomes medically stationary in those cases where:

(a) The claimant submits and obtains acceptance of a claim for a compensable new medical condition or an omitted medical condition and the claim is initiated after the aggravation rights under ORS 656.273 have expired; and

(b) The claimant qualifies as a "worker" pursuant to ORS 656.005(30). "Worker" does not include a person who has withdrawn from the work force during the period for which such benefits are sought.

(3) The claimant is deemed to be in the work force if:

(a) The claimant is engaged in regular employment;

(b) The claimant, although not employed, is willing to work and is making reasonable efforts to obtain employment; or

(c) The claimant is willing to work, but the claimant is not employed, and the claimant is not making reasonable efforts to obtain employment because such efforts would be futile as a result of the effects of the compensable injury.

(4) The insurer shall make the first payment of temporary disability compensation in accordance with ORS 656.210, 656.212(2) and 656.262(4) within 14 days from:

(a) The date of an order of the Board reopening the claim; or

(b) The date the insurer voluntarily reopened the claim.

(5) Temporary disability compensation shall be paid until one of the following events first occurs:

(a) The claimant is medically stationary pursuant to ORS 656.005(17);

(b) The claim is closed pursuant to OAR 438-012-0055;

(c) A claim disposition agreement is submitted to the Board pursuant to ORS 656.236(1), unless the claim disposition agreement provides for the continued payment of temporary disability compensation; or

(d) Termination of such benefits is authorized by the terms of ORS 656.268(4)(a) through (d).

(6)(a) An Own Motion insurer may unilaterally suspend compensation under the circumstances provided in ORS 656.262(4)(e), (4)(h), and (4)(i). If the Own Motion insurer believes that temporary disability compensation should be suspended for any reason other than those provided in ORS 656.262(4)(e), (4)(h), and (4)(i), the insurer may make a written request to the Board for such suspension. This request shall:

(A) State the reasons the insurer is requesting that the Board suspend the claimant's temporary disability compensation;

(B) Include copies of supporting documentation; and

(C) Be mailed to the claimant and the claimant's attorney, if any, by certified or registered mail.

(b) Unless an extension is granted by the Board, claimant or claimant's attorney shall have 14 days to respond to the Board in writing to the request.

(c) Unless an extension is granted by the Board, the insurer shall have 14 days to reply in writing to claimant's response.

(d) The insurer shall not suspend compensation under this section without prior written authorization by the Board, except as provided in ORS 656.262(4)(e), (4)(h), and (4)(i).

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.005(30), 656.262(4), 656.268(4), 656.278(1) & (2) & 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 8-1990(Temp), f. 8-23-90, cert. ef. 9-15-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-012-0055

Closure of Claims Reopened Under ORS 656.278

When a claim has been voluntarily reopened or ordered reopened by the Board and the medical reports indicate to the insurer that the claimant's condition has become medically stationary, the claim shall be closed by the insurer without the issuance of a Board order. In all such cases the insurer shall issue a Notice of Closure (Form 2066) to the claimant with copies to the claimant's attorney, if any, and the Workers' Compensation Division. The notice shall be on the form prescribed by the Director and shall inform the claimant of the amount and duration of temporary disability compensation, the amount of any permanent disability award determined under ORS 656.278(1)(b) and (2)(d), and the medically stationary date, and shall include the following notice in prominent or bold face type:

"IF YOU THINK THIS CLAIM CLOSURE IS WRONG, YOU MAY ASK THE WORKERS' COMPENSATION BOARD TO REVIEW IT AND DECIDE WHETHER YOU ARE ENTITLED TO MORE COMPENSATION. IF YOU DO NOT ASK FOR REVIEW WITHIN 60 DAYS OF THE DATE OF THIS NOTICE YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO CONTEST THIS NOTICE UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS. AFTER 180 DAYS ALL RIGHTS WILL BE LOST. YOU MAY ASK FOR A REVIEW BY WRITING TO THE BOARD AT 2601 25TH STREET SE, SUITE 150, SALEM, OREGON 97302-1282. YOU MAY HAVE AN ATTORNEY OF YOUR CHOICE, WHOSE FEE WILL BE LIMITED TO A PERCENTAGE OF ANY MORE COMPENSATION YOU MAY BE AWARDED."

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.278(1), (2) & (6) & 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 3-1988(Temp), f. 10-20-88, ef. 11-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 8-1990(Temp), f. 8-23-90, cert. ef. 9-15-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-012-0060

Board Review of Insurer Closure

(1) The request for Board review of the insurer's claim closure pursuant to OAR 438-012-0055(1) shall be in writing, signed by the claimant or the claimant's attorney, and shall include, but is not limited to, the following information:

(a) The claimant's name and mailing address;

(b) A statement that Board review is requested, and the reason(s) for the request for review; reasons for requesting review may include, but are not limited to:

(A) Disagreement with the medically stationary determination;

(B) Disagreement with the temporary disability compensation awarded, including rate of payment and/or dates awarded; and/or

(C) Disagreement with permanent disability compensation awarded, if the claim was reopened for a "post-aggravation rights" new medical condition claim and/or omitted medical condition claim. If the claimant disagrees with the impairment used in rating of the claimant's permanent disability for such a claim, the claimant may request appointment of a medical arbiter;

(c) The name of the insurer; and

(d) A copy of the Notice of Closure (Form 2066).

(2) To be considered, the request must be filed with the Board within 60 days after the mailing date of the notice of closure, or within 180 days after the mailing date if the claimant establishes good cause for the failure to file the request within 60 days after the mailing date. The Board shall notify all parties that review has been requested.

(3) Within 14 days after notification from the Board that a review has been requested, the insurer shall submit to the Board and to the claimant and the claimant's attorney, if any, legible copies of all evidence that pertains to the claimant's compensable condition at the time of closure, including any evidence relating to permanent disability. Such evidence should be marked as exhibits, arranged in chronological order, and accompanied by an exhibit list. The insurer may also submit written arguments at this time, with copies to the claimant or the claimant's attorney, if any.

(4) The claimant may submit additional evidence and written argument to the Board, with copies to the insurer or its attorney, if any. To be considered, such evidence and argument must be submitted within 21 days from the date the insurer mails the evidence pursuant to section (3) of this rule.

ADMINISTRATIVE RULES

(5) No additional written argument may be submitted unless authorized by the Board.

(6) The Board may refer a matter to the Hearings Division for an evidentiary hearing and recommended findings of fact and conclusions.

(7) The Board may refer a disagreement regarding the rating of the claimant's permanent disability for a "post-aggravation rights" new or omitted medical condition to the Workers' Compensation Division for an evaluation and recommendation based on the record presented to the Board.

(8) The Board shall issue its order within a reasonable time after receipt of all evidence and argument from the parties and any recommendations from the Hearings Division.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.278(1) & (6) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 2-1990, f. 1-24-90, cert. ef. 2-28-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-012-0090

Hearing Procedures Regarding Denial and/or Clarification Notice of "Post-Agravation Rights" New Medical Condition or Omitted Medical Condition Claims; Proposed and Final Own Motion Order; Notice of Appeal Rights

(1) Requests for hearing regarding a denial under OAR 438-012-0070 and/or 438-012-0075 or a Notice of Clarification under OAR 438-012-0080 of a "post-aggravation rights" new medical condition or omitted medical condition claim shall be processed by the Hearings Division pursuant to the procedures for ordinary cases prescribed in divisions 006, 007, and 009.

(2) Within 30 days of closure of the hearing record, the Administrative Law Judge shall decide the issues arising from the hearing request(s) from a denial and/or clarification notice of a "post-aggravation rights" new medical condition or omitted medical condition claim(s) by issuing a "Proposed and Final Own Motion Order," including the following written statement, in prominent or bold face type, concerning the parties' rights of appeal:

NOTICE TO ALL PARTIES: IF YOU ARE DISSATISFIED WITH THIS PROPOSED AND FINAL OWN MOTION ORDER, YOU MAY, WITHIN THIRTY (30) DAYS AFTER THE MAILING DATE ON THIS ORDER, REQUEST REVIEW BY THE WORKERS' COMPENSATION BOARD, 2601 25TH ST. SE, SUITE 150, SALEM, OR 97302-1282. ANY SUCH REQUEST SHALL EITHER BE DELIVERED OR MAILED TO THE BOARD AT THE ABOVE ADDRESS. COPIES OF THE REQUEST SHOULD ALSO BE MAILED TO ALL OTHER PARTIES TO THIS PROCEEDING.

FAILURE TO DELIVER OR MAIL THE REQUEST FOR REVIEW TO THE BOARD WITHIN THE TIME ALLOWED WILL RESULT IN THE LOSS OF YOUR RIGHT TO APPEAL THIS OWN MOTION ORDER AND THE BOARD WILL BE UNABLE TO REVIEW THE ADMINISTRATIVE LAW JUDGE'S DECISION, WHICH SHALL, AS A MATTER OF LAW, CONSTITUTE A FINAL OWN MOTION ORDER OF THE BOARD.

(3) If a request for review of an Administrative Law Judge's "Proposed and Final Own Motion Order" is not filed with the Board within 30 days of the mailing of the order, the order shall, as a matter of law, constitute a Final Own Motion Order of the Board.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented.: ORS 656.267(1)(3), ORS 656.278(1)(b) & ORS 656.726(5)

Hist.: WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-012-0095

Board Review of Administrative Law Judge's Proposed and Final Own Motion Order

(1) Within a reasonable time after receiving a timely-filed request for review of an Administrative Law Judge's "Proposed and Final Own Motion Order," the Board will, by mail, acknowledge the request(s) for review, provide copies of the hearing transcript to the parties or their attorneys, and announce a briefing schedule.

(2) The briefing schedule will provide that the requesting party's appellant's brief will be due within 21 days from the date of the Board's letter. The respondent's/cross-appellant's brief will be due within 21 days from the date of mailing of the appellant's brief. The appellant's / cross-respondent's brief will be due within 14 days from the date of mailing of the respondent's/cross-appellant's brief. The cross-appellant's reply brief will be due within 14 days from the date of mailing of the cross-respondent's brief. Unless otherwise authorized by the Board, no other briefs will be considered. Extensions to the briefing schedule may be granted by the Board in the manner described in OAR 438-011-0020(3). The Board may waive its briefing schedule rules on a finding that extraordinary circumstances justify such an action.

(3) Review by the Board of the Administrative Law Judge's "Proposed and Final Own Motion Order" is de novo based on the entire

record developed at the Hearings Division. If the record is improperly, incompletely, or otherwise insufficiently developed, the Board may:

(a) Admit additional documentary evidence into the record; or

(b) Remand the case to the Administrative Law Judge to take additional evidence and issue a "Proposed and Final Own Motion Order on Remand."

(4) Within 30 days after completing its review of the record, the Board shall issue its order deciding the issues arising from the request for Board review.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented.: ORS 656.267(1)(3), 656.278(1)(b) & 656.726(5)

Hist.: WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-012-0100

Board Review of Request for Review of Notice of Incomplete Claim

(1) Within a reasonable time after receiving a request for review of an Own Motion insurer's Notice of Incomplete Claim under OAR 438-012-0085, the Board will, by mail, acknowledge the request.

(2) Within 14 days after notification from the Board that a review has been requested, the Own Motion insurer shall submit to the Board and to the claimant or the claimant's attorney, if any, legible copies of all evidence which pertains to the claimant's compensable condition at the time of the insurer's Notice of Incomplete Claim. The insurer's submission may also include its written position regarding the request for review, with copies to the claimant or the claimant's attorney, if any.

(3) The claimant or the claimant's attorney may submit additional evidence and written argument to the Board, with copies to the Own Motion insurer or its attorney, if any. To be considered, such evidence and argument must be submitted within 21 days from the date the Own Motion insurer mails the evidence and its written position to the Board pursuant to section (2).

(4) The Board may refer a matter to the Hearings Division for an evidentiary hearing and recommended findings of fact and conclusions.

(5) Within 30 days after completing its review of the record, the Board shall issue its order deciding the issues arising from the request for Board review.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented.: ORS 656.267(1)(3), 656.278(1)(b) & 656.726(5)

Hist.: WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-012-0110

Penalty for Unreasonable Failure to Comply or Untimely Compliance with Board Own Motion Rules

(1) Failure to comply with the Board's Own Motion rules by the insurer, if found unreasonable or unjustified, may result in the imposition of penalties and attorney fees pursuant to ORS 656.262(11) and OAR 438-015-0110, exclusion of evidence, and/or referral for a fact-finding hearing.

(2) Failure to comply with the Board's Own Motion rules by the claimant, if found unreasonable or unjustified, may result in the exclusion of evidence, referral for a fact-finding hearing, and/or dismissal of the request for benefits.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented.: ORS 656.267(1)(3), 656.278(1)(b) & 656.726(5)

Hist.: WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-015-0011

Attorney Retainer Agreement

(1) Except as provided in subsection (2), every executed attorney retainer agreement filed with the Administrative Law Judge or Board shall be in English.

(2) Any English language attorney retainer agreement filed with the Administrative Law Judge or Board may be accompanied by a translation into a foreign language that is certified by the translator to be an accurate and true translation of the English writing. Either the English or the foreign language writing must be signed.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.388(3)

Hist.: WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-022-0005

Adoption of Attorney General's Model Rules

To the extent that the following rules are applicable to the Workers' Compensation Law (Chapter 656), the Board hereby adopts by reference OAR 137-001-0005 through 137-001-0080 (Attorney General's Model Rules for Rulemaking), as adopted by the Department of Justice effective December 9, 2003.

Stat. Auth.: ORS 656.726(5) & ORS 654.025(2)

Stats. Implemented: ORS 183.341(4)

Hist.: WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

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438-022-0010

Notice of Rulemaking

(1) Prior to adoption, amendment or repeal of any administrative rule, other than a temporary rule adopted under ORS 183.335(5), the Board shall give notice of the intended action:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the intended action;

(b) By mailing a copy of the notice to persons on the Board's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the intended action;

(c) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the intended action; and

(d) By mailing or furnishing a copy of the notice to:

- (A) The Oregonian;
- (B) The Associated Press; and
- (C) The Capitol Press Room.

(2) The Board shall give notice of any administrative rulemaking hearing:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 14 days before the hearing; and

(b) By mailing notice of the hearing to any person requesting the hearing and to the persons on the Board's mailing list established pursuant to ORS 183.335(8) at least 21 days before the hearing.

Stat. Auth.: ORS 656.726(5) & ORS 654.025(2)

Stats. Implemented: ORS 183.341(4)

Hist.: WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

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

Adm. Order No.: WCD 7-2004(Temp)

Filed with Sec. of State: 7-15-2004

Certified to be Effective: 7-15-04 thru 1-10-05

Notice Publication Date:

Rules Amended: 436-035-0500

Subject: Promulgation of temporary disability standards to address the impairment of an individual injured worker in WCD files GAH-6929 and HAG-9396.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-035-0500

Temporary Rules Promulgation for Individual Claims

(1) This rule applies to the rating of permanent disability under Chapter 656 in individual cases pursuant to ORS 656.726(4)(f)(C) which requires the director to stay the reconsideration proceeding and adopt temporary rules in cases where the director finds that the worker's impairment is not addressed in the disability standards.

(2) Temporary rules promulgated pursuant to ORS 656.726(4)(f)(C) will be incorporated by reference to the Workers' Compensation Division claim file number and will be applicable solely to the rating of that claim. The temporary rule will be effective upon filing with the Secretary of State and elapse 180 days thereafter in accordance with ORS 183.335(6)(a).

(3) Notice of adoption of temporary rules will be given by mailing a copy of the temporary rule to the affected parties and to others as provided in OAR 436-001-0000(3).

AAG-7056 This worker was injured when he amputated the tips of the third and fourth fingers when his right hand was caught in machinery. As a result of the accepted conditions and the surgery to repair the injured fingers, there was a resulting loss of sensation in the right third and fourth fingers. The Director assigns an impairment value of 7% for the loss of sensation in the middle phalanx of the right third (middle) and 7% for the loss of sensation in the middle phalanx of the right fourth (ring) finger. This value shall be combined with applicable impairment values for the right middle and ring fingers, including other sensory values as appropriate. Notwithstanding OAR 436-035-0003, this rule applies to only WCD file no. AAG-7056.

EAG-5154 As a result of the accepted lacerations of the right fingers and hand with post traumatic neurologic dysfunction the worker experiences a loss of function due to cold intolerance. The standards do not address cold intolerance due to neurologic dysfunction. The Director finds this loss of function similar to the loss of function experienced with Class 2 vascular dysfunction and assigns an impairment value of 15% of the right hand. See OAR 436-035-0110(6). This value shall be combined with any

other applicable impairment values for the involved right hand. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. EAG-5154.

GAH-6929 This worker was injured when he suffered an extensor tendon laceration resulting in significant swelling and carpal tunnel syndrome. Due to the accepted conditions and the multiple surgeries, there was a resulting loss of sensation in the right index finger not addressed in the standards. The Director assigns an impairment value of 5% for the loss of sensation in the proximal phalanx of the right index finger. This value shall be combined with applicable impairment values for the right index finger, including other sensory values as appropriate. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. GAH-6929.

HAG-9396 As a result of the accepted open avulsion fracture of the right index finger with resulting neurologic dysfunction the worker experiences a loss of function due to cold intolerance. The standards do not address cold intolerance due to neurologic dysfunction. The Director finds this loss of function similar to the loss of function experienced with Class 3 vascular dysfunction and assigns an impairment value of 35% of the right index finger. See OAR 436-035-0110(6). This value shall be combined with any other applicable impairment values for the involved right index finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. HAG-9396.

Stat Auth.: ORS 656.726(4)

Stats Implemented: ORS 656.268(6) & 656.726(4)(f)(C)

Hist.: WCD 16-1992(Temp), Case #A58-7576 & Case #D60-5352, f. & ef. 12-31-92 - 6-29-93; WCD 2-1993(Temp), Case #A58-2159, B59-4533, E61-4228, & 159-2031, f. & ef. 4-28-93 - 10-25-93; WCD 4-1993, f. & cert. ef. 6-29-93; WCD 5-1993(Temp), Case #164-3064, f. & cert. ef. 9-2-93 - 3-2-94; WCD 6-1993(Temp), Case #164-3064, f. & cert. ef. 10-22-93 - 4-19-94; WCD 4-1994(Temp), f. & cert. ef. 5-26-94; WCD 6-1994(Temp), f. & cert. ef. 7-15-94; WCD 8-1994(Temp), f. & cert. ef. 8-31-94; WCD 11-1994(Temp), f. & cert. ef. 11-10-94; WCD 1-1995(Temp), f. & cert. ef. 1-26-95; WCD 2-1995(Temp), f. & cert. ef. 3-2-95; WCD 3-1995(Temp), f. & cert. ef. 4-13-95; WCD 4-1995(Temp), f. & cert. ef. 5-31-95; WCD 5-1995(Temp), f. & cert. ef. 7-11-95; WCD 14-1995(Temp), f. & cert. ef. 10-5-95; WCD 16-1995(Temp), f. & cert. ef. 11-2-95; WCD 19-1995(Temp), f. & cert. ef. 12-7-95; WCD 4-1996(Temp), f. & cert. ef. 2-1-96; WCD 11-1996(Temp), f. & cert. ef. 3-20-96; WCD 15-1996(Temp), f. & cert. ef. 7-3-96; WCD 18-1996, f. 8-6-96, cert. ef. 8-7-96; WCD 22-1996(Temp), f. & cert. ef. 10-31-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-1997(Temp), f. & cert. ef. 1-15-97; WCD 3-1997(Temp), f. 3-12-97, cert. ef. 3-13-97; WCD 6-1997(Temp), f. & cert. ef. 5-14-97; WCD 12-1997(Temp), f. & cert. ef. 9-9-97; WCD 4-1998(Temp), f. & cert. ef. 3-31-98 thru 9-26-98; WCD 7-1998(Temp), f. 7-13-98, cert. ef. 7-15-98 thru 1-11-99; WCD 9-1998(Temp), f. & cert. ef. 10-15-98 thru 4-12-99; WCD 1-1999(Temp), f. 1-12-99, cert. ef. 1-15-99 thru 7-13-99; WCD 5-1999(Temp), f. & cert. ef. 4-15-99 thru 10-12-99; WCD 10-1999(Temp), f. & cert. ef. 7-15-99 thru 1-10-2000; WCD 12-1999(Temp), f. 10-14-99, cert. ef. 10-15-99 thru 4-12-00; WCD 1-2000(Temp), f. 1-12-00, cert. ef. 1-14-00 thru 7-12-00; WCD 5-2000(Temp), f. 4-13-00, cert. ef. 4-14-00 thru 10-10-00; WCD 7-2000(Temp), f. 7-14-00, cert. ef. 7-14-00 thru 1-9-01; WCD 8-2000(Temp), f. & cert. ef. 10-13-00 thru 4-10-01; WCD 1-2001(Temp), f. & cert. ef. 1-12-01 thru 7-10-01; WCD 3-2001(Temp) f. & cert. ef. 4-13-01 thru 10-9-01; WCD 6-2001(Temp), f. & cert. ef. 7-13-01 thru 1-8-02; WCD 9-2001(Temp), f. & cert. ef. 10-12-01 thru 4-9-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 5-2002(Temp), f. 4-12-02, cert. ef. 4-15-02 thru 10-11-02; WCD 8-2002(Temp), f. 7-12-02 cert. ef. 7-15-02 thru 1-10-03; WCD 11-2002(Temp), f. 10-11-02, cert. ef. 10-15-02 thru 4-12-03; WCD 1-2003(Temp), f. & cert. ef. 1-15-03 thru 7-13-03; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 4-2003(Temp), f. 4-14-03, cert. ef. 4-15-03 thru 10-11-03; WCD 7-2003(Temp), f. & cert. ef. 7-15-03 thru 1-10-04; WCD 1-2004(Temp), f. & cert. ef. 1-21-04 thru 7-18-04; WCD 5-2004(Temp), f. & cert. ef. 4-19-04 thru 10-15-04; WCD 7-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05

Adm. Order No.: WCD 8-2004

Filed with Sec. of State: 7-15-2004

Certified to be Effective: 8-1-04

Notice Publication Date: 6-1-04

Rules Amended: 436-105-0003, 436-105-0500, 436-105-0540

Rules Repealed: 436-105-0003(T), 436-105-0500(T), 436-105-0540(T), 436-105-0570

Subject: These rules make permanent recent temporary amendments to OAR 436-105 by extending 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 work-

ADMINISTRATIVE RULES

ers' compensation insurance coverage to actively employed Home Care Workers by an appropriate insurer..."

In addition, rule 0570 is being repealed; this rule restates certain statutory requirements affecting the service of orders.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns <http://wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

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; WCD 8-2004, f. 7-15-04, cert. ef. 8-1-04

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;

(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; WCD 8-2004, f. 7-15-04, cert. ef. 8-1-04

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 RULES

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. 10-1-02, Renumbered from 436-110-0540; WCD 4-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 9-27-04; WCD 8-2004, f. 7-15-04, cert. ef. 8-1-04

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Department of Corrections Chapter 291

Adm. Order No.: DOC 5-2004

Filed with Sec. of State: 7-12-2004

Certified to be Effective: 7-12-04

Notice Publication Date: 2-1-04

Rules Adopted: 291-062-0100, 291-062-0110, 291-062-0120, 291-062-0130, 291-062-0140, 291-062-0150, 291-062-0160

Rules Repealed: 291-062-0010, 291-062-0020, 291-062-0030, 291-062-0040, 291-062-0050, 291-062-0060, 291-062-0070, 291-062-0080

Subject: The 2003 Oregon Legislature enacted a law that requires the department to establish an alternative incarceration program that includes intensive addiction intervention and treatment. These rule amendments are necessary for the establishment of the criteria for inmate eligibility and selection for participation in the program, as well as suspension and removal. The eligibility and selection requirements have been merged with the requirements for participation in another alternative incarceration program already established within the department.

Rules Coordinator: Carolyn Schnoor—(503) 945-0933

291-062-0100

Authority, Purpose and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with 2003 Or Laws, Chapter 464 and ORS 179.040, 421.500 to 421.512, 423.020, 423.030 and 423.075.

(2) Purpose: The purpose of these rules is to establish special alternative incarceration programs and establish department policy and procedures for the program's operation and management in accordance with ORS 421.500 to 421.512.

(3) Policy: Within the inherent limitations of resources, and the need to maintain facility security, internal order, and discipline, and the health and safety of staff, inmates, and the public, it is the policy of the Department of Corrections to discharge its statutory responsibilities to establish alternative incarcerations programs by creating and operating programs that promote inmate rehabilitation during incarceration and reduce the risk of continuing criminal conduct when the inmate is returned to the community.

Stat Auth: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075

Stat Impl: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075

Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04

291-062-0110

Definitions

(1) Alternative Incarceration Program: A highly structured corrections program that includes intensive interventions, rigorous personal responsibility and accountability, physical labor, and service to the community.

(2) Short-Term Transitional Leave: Leave for a period not to exceed 90 days preceding an established release date for the purpose of securing appropriate transitional support in accordance with ORS 421.400 and the department's rule on Short-Term Transitional Leave, Emergency Leaves and Supervised Trips (OAR 291-063).

(3) Custody Cycle: The time period during which an offender begins incarceration with the Department of Corrections and/or is under the supervision of community corrections until discharge from all Department of Corrections and community corrections incarceration and supervision.

Stat Auth: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075

Stat Impl: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075

Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04

291-062-0120

General

(1) The Department of Corrections has established and operates two types of alternative incarceration programs. One of the alternative incarceration programs is based in part on a military model of intervention, and is a maximum of 270 days duration. The other is an intensive alternative incarceration addictions program that includes intensive addiction intervention and treatment, and is a minimum of 270 days duration. Each alternative incarceration program includes two components — a structured institution program and a period of structured short-term transitional leave. However, the department in its discretion may require individual program participants to complete their assigned program without a period of transitional leave. Each alternative incarceration program will require its participants to engage in a minimum of 14 hours of highly structured routine every day for the duration of the program.

(2) Inmates are required to participate in and successfully complete transition classes offered as a condition of program graduation. The number and frequency of these classes will be determined by each facility.

(3) The department in its discretion may grant individual inmates a period of structured, short-term transitional leave as part of their alternative incarceration program assignment if the inmate has identified viable self-support options in the community or if the supervising community corrections agency has approved a temporary subsidy that will allow the inmate to successfully transition in the community.

Stat Auth: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075

Stat Impl: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075

Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04

291-062-0130

Inmate Eligibility

(1) The department will identify inmates eligible to participate in alternative incarceration programs. To be eligible to participate in the program an inmate must:

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(a) Be sentenced to the legal and physical custody of the department and be subject to a term of post-prison supervision upon satisfaction of a term of incarceration in a Department of Corrections facility;

(b) Be at least 18 years of age at the time of entry into the program, or may be under 18 years of age and have been convicted of a crime upon remand from juvenile court; and

(c) Be assigned minimum custody status in accordance with the department's rule on Classification (Inmate) (OAR 291-104) and have no more than 36 months to serve at the time of program entry.

(2) An inmate is not eligible to participate in alternative incarceration programs during service of a sentence for conviction of a crime described in ORS 163.095 (Aggravated Murder), 163.115 (Murder), 163.118 (Manslaughter I), 163.235 (Kidnapping I), 163.355 (Rape III), 163.365 (Rape II), 163.375 (Rape I), 163.385 (Sodomy III), 163.395 (Sodomy II), 163.405 (Sodomy I), 163.408 (Unlawful Sexual Penetration II), 163.411 (Unlawful Sexual Penetration I), 163.415 (Sexual Abuse III), 163.425 (Sexual Abuse II), 163.427 (Sexual Abuse I), 163.435 (Contributing to the Delinquency of a Minor), 163.525 (Incest), 164.325 (Arson I), or 164.415 (Robbery I).

(3) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provisions of ORS 137.635.

(4) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under ORS 161.610 until the inmate completes the minimum incarceration term imposed by the court less earned time under ORS 421.121.

(5) An inmate is not eligible to participate in alternative incarceration programs if the inmate:

(a) Has an adult conviction for felony escape which was committed within three years prior to the time of program entry, or has a conviction for unauthorized departure from the legal and/or physical custody of the Oregon Department of Corrections or its authorized agents which was committed within three years prior to the time of program entry.

(b) Is serving non-sentencing guidelines prison terms (sentences with crime dates prior to November 1, 1989), unresolved criminal prosecutions, consecutive county jail terms, or any other circumstance that would conflict with his/her release from prison upon satisfactory completion of an alternative incarceration program.

(c) Has a current detainer. Inmates with detainers ledged with the department after they have been selected and assigned to one of the programs, and the detainer is discovered after the inmate has completed approximately one-half may be permitted to continue their participation in the program at the discretion of the superintendent/ designee based on their program performance to date.

(d) Is currently assigned to special security housing for reasons of protective custody, and the inmate's assignment to the program is otherwise determined by department officials to pose a threat to the safe, secure and orderly operation and management of the program, including the safety of department staff and inmates.

(e) Has less than ten months to serve from the first day of program entry. May have nine months to serve with superintendent's/designee's approval.

(f) Is serving a parole or post-prison supervision violation sanction pursuant to ORS 421.168(1) and 144.108(3)(b).

(6) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provision of ORS 137.700 or 137.707 until completion of the mandatory minimum incarceration term. For crimes committed on or after December 5, 1996, the inmate is eligible after completion of the mandatory minimum incarceration term only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(7) An inmate is not eligible to participate in alternative incarceration programs if the inmate, on or after April 1, 1995, commits and is convicted of Assault II as defined in ORS 163.175(1)(b) (Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon), Kidnapping II (ORS 163.225), or Robbery II (ORS 164.405), unless the sentencing court, notwithstanding ORS 137.700 and 137.707, has imposed a lesser sentence pursuant to ORS 137.712 and (for crimes committed on or after December 5, 1996) only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(8) An inmate is not eligible to participate in alternative incarceration programs if the inmate on or after October 23, 1999, commits and is convicted of Manslaughter II as defined in ORS 163.125, unless the sentencing court, notwithstanding ORS 137.700 and 137.707, has imposed a less-

er sentence pursuant to ORS 137.712 and only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(9) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provisions of ORS 161.725 or 161.737 (dangerous offenders) for a crime committed on or after November 1, 1989. An inmate shall not be allowed to participate in alternative incarceration programs even after completion of the required minimum incarceration term (determinate sentence) even if the Board of Parole and Post-Prison Supervision finds that the person is no longer dangerous or finds that the person remains dangerous but can be adequately controlled with supervision and mental health treatment and sets a post-prison supervision release date.

(10) If otherwise eligible under Oregon law, any person sentenced for a crime committed on or after December 5, 1996, shall be eligible for alternative incarceration programs only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

Stat Auth: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075

Stat Impl: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075

Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04

291-062-0140

Inmate Selection

(1) The department in its discretion may accept eligible inmates into an alternative incarceration program based on its determination that the inmate's participation in such a program is consistent with the safety of the community, the welfare of the applicant, the program objectives and the rules of the department. The superintendent/designee of each facility that has an alternative incarceration program shall appoint a committee that will be responsible for making recommendations to the superintendent/designee on the placement of inmates in the program.

(2) An inmate will not be accepted into an alternative incarceration program unless the inmate submits a written request to participate.

(a) The request must contain a statement signed by the inmate applicant providing that he/she:

(A) Is physically and mentally able to withstand the rigors of the program; and

(B) Has reviewed the alternative incarceration program descriptions provided by the department and agrees to comply with each of the requirements.

(b) Otherwise eligible inmate applicants with a physical and/or mental disability will be evaluated individually by the department to determine whether they may successfully participate in the fundamental components of an alternative incarceration program.

(c) The department shall make the final determination regarding an inmate's physical or mental ability to withstand the rigors of the program.

Stat Auth: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075

Stat Impl: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075

Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04

291-062-0150

Removal or Suspension From an Alternative Incarceration Program

(1) The superintendent/designee in his/her discretion may remove or suspend an inmate from any portion of an alternative incarceration program, and may reassign the inmate to another Department of Corrections facility to serve the balance of the inmate's court-imposed incarceration term(s), for administrative or disciplinary reasons. The decision to remove or suspend an inmate from the program will be made in consultation with a committee appointed by the superintendent/designee that is responsible to review the performance of inmates participating in an alternative incarceration program.

(2) Administrative Removal/Suspension:

(a) The superintendent/designee in his/her discretion may immediately remove or suspend an inmate from the program and reassign the inmate to another Department of Corrections facility without a hearing, for administrative reasons.

(b) An inmate who is not available to participate substantially in the program (e.g., physical and mental illness, court appearance(s), disciplinary segregation, etc.) for up to 30 days following placement will have his/her program participation suspended and be evaluated by the committee to determine whether the inmate will be removed from the program or accepted back into the program at the program level deemed appropriate by the superintendent/designee.

(c) Any change in status that would cause an inmate to be ineligible to continue participating in the program as described in OAR 291-062-0130 (e.g., discovery of a detainer), may result in a suspension. If suspended, the

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inmate will have 30 days to resolve his/her eligibility status with the department. If the inmate's eligibility status remains unresolved, the inmate will be removed from the program.

(d) Inmates are expected to participate in all aspects of their program assignment at a level consistent with the length of time they have been assigned to the program. The superintendent/designee in his/her discretion may suspend an inmate from the program for 30 days or more when, in consultation with the program performance review committee, the superintendent/designee determines that the inmate is not making adequate program progress. During the suspension, the inmate will be given an opportunity to come into compliance with established program standards. If the inmate comes into compliance, he/she will be placed at a program level deemed appropriate by the superintendent/designee. If the inmate fails to meet program expectations, he/she may be removed from the program. If the inmate is assigned to an intensive alternative incarceration addiction program, the inmate may have the length of his/her program extended beyond 270 days.

(e) Administrative Review of Removal for Change in Inmate's Eligibility Status:

(A) When the superintendent/designee removes an inmate from the inmate's program assignment for a change in the inmate's eligibility status, the inmate will be notified in writing of the reason(s) for the removal decision, and the opportunity for administrative review of the decision.

(B) To obtain an administrative review of the removal decision, an inmate must send a request for administrative review in writing to the Assistant Director for Transitional Services/designee, together with any supporting documentation. The Assistant Director for Transitional Services/designee must receive the request within 15 calendar days of the date of the notice of the administrative removal. The review should be completed within 15 days after receiving an inmate's review request. The Assistant Director for Transitional Services/designee's decision on administrative review shall be final.

(3) Disciplinary Removal/ Suspension: An inmate who after a hearing in accordance with procedures provided in the department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) is found to have committed a major disciplinary rule violation may be removed from the program and transferred to another Department of Corrections facility at the discretion of the superintendent/designee.

(4) Voluntary Removal: An inmate may elect to remove himself/herself from an alternative incarceration program; however, to do so the inmate must sign a document requesting removal from the program to the superintendent/designee.

(5) Once an inmate has been removed from an alternative incarceration program as a program failure, he/she will be ineligible to participate in another alternative incarceration program during the same custody cycle.

Stat Auth: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075
Stat Impl: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04

291-062-0160

Alternative Incarceration Program Prison Management

(1) To the extent that other Department of Corrections rules may conflict with provisions in these rules (OAR 291-062-0100 to 291-062-0160), such rules are inapplicable to alternative incarceration programs and are modified as provided below to reflect the purposes of alternative incarceration programs and the relatively short period of confinement.

(2) Modified Rules:

(a) Short-Term Transitional Leave, Emergency Leaves and Supervised Trips (OAR 291-063):

(A) An inmate who completes, to the department's satisfaction, all of the requirements of the structured institution program may be released into the community on short-term transitional leave. Upon successfully conforming to directed activities while participating in the short-term transitional leave component of the program, an inmate shall be released into the community on post-prison supervision.

(B) Because alternative incarceration program participants who successfully complete their program will effectively receive a reduction in their incarceration terms, they will be held to a higher standard of behavior on transitional leave than other inmates on short-term transitional leave. Therefore, OAR 291-063 is modified with respect to alternative incarceration program participants to provide that violations of transitional leave conditions will be addressed in accordance with Department of Corrections rule on structured intermediate sanctions, OAR 291-058.

(b) Hygiene, Grooming and Sanitation (Inmate) (OAR 291-123) and Personal Property (Inmate) (OAR 291-117): The superintendents in the

facilities where alternative incarceration programs are provided may establish separate and distinct standards for personal grooming and hygiene as a means to support program goals. Canteen operations and purchases, food services and educational requirements for participants may be modified by those facilities where alternative incarceration programs are offered as a means of supporting program goals. Each facility may develop internal processes for staff and inmates outlining the applicable requirements and/or restrictions specific to these programs.

(c) Performance Recognition and Award System (PRAS) (OAR 291-077): Inmates assigned to an alternative incarceration program will receive a standard number of points for their PRAS award as determined by the department for work and program participation. Inmates are eligible for special recognition awards pursuant to the department's rule on Performance Recognition and Award System.

(d) Mail (Inmate) (OAR 291-131): Inmates participating in the military model of intervention alternative incarceration program may not be allowed to correspond with inmates participating in the same program, and/or may not be allowed to correspond with other inmates housed in general population at the facility where the program is operating.

(e) Prison Term Modification (OAR 291-097): Inmates who begin an alternative incarceration program will be considered to be participating in their primary program plan. If an inmate fails to complete any portion of the program because of inadequate program performance, disciplinary reasons, or voluntary removal, the inmate will be considered noncompliant with his/her primary program plan, and will not be granted earned time credit for programming during that review period.

Stat Auth: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075
Stat Impl: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04

Department of Fish and Wildlife Chapter 635

Adm. Order No.: DFW 53-2004

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Rules Adopted: 635-073-0065

Rules Amended: 635-067-0000, 635-068-0000, 635-069-0000, 635-070-0000, 635-071-0000, 635-073-0000, 635-073-0070

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

Rules Coordinator: Katie Thiel—(503) 947-6033

635-067-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2004 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2004 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted arms and ammunition are established in OAR chapter 635, division 065. Controlled hunt tag numbers for 2004 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 067 by reference.

[ED. NOTE: Tables & Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162
Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-

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13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04

635-068-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting western Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2004 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 068 by reference.

(3) OAR chapter 635, division 068 incorporates, by reference, the requirements for hunting western Oregon deer set out in the document entitled "2004 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2004 Oregon Big Game Regulations" in addition to OAR Chapter 635, to determine all applicable requirements for hunting western Oregon deer. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 39-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 121-2003, f. 12-4-03, cert. ef. 1-19-04; DFW 53-2004, f. & cert. ef. 6-16-04

635-069-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting eastern Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2004 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 069 by reference.

(3) OAR chapter 635, division 069 incorporates, by reference, the requirements for hunting eastern Oregon deer set out in the document entitled "2004 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2004 Oregon Big Game Regulations" in addition to OAR Chapter 635, to determine all applicable requirements for hunting eastern Oregon deer. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 40-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 32-1999(Temp), f. & cert. ef. 5-4-99 thru 10-31-99; DFW 34-1999(Temp), f. & cert. ef. 5-12-99 thru 10-31-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 20-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 7-2003, f. 1-17-03, cert. ef. 2-1-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 53-2004, f. & cert. ef. 6-16-04

635-070-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Cascade and Coast elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2004 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 070 by reference.

(3) OAR chapter 635, division 070 incorporates, by reference, the requirements for hunting western Oregon elk set out in the document entitled "2004 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2004 Oregon Big Game Regulations" in addition to OAR Chapter 635, to determine all applicable requirements for hunting western Oregon elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

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

Hist.: FWC 41-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 119-2003, f. 12-4-03, cert. ef. 4-1-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 8-2004(Temp), f. & cert. ef. 2-2-04 thru 7-31-04; DFW 53-2004, f. & cert. ef. 6-16-04

635-071-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Rocky Mountain elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2004 are listed in Tables 1 and 2 and are adopted and incorporated in OAR chapter 635, division 071 by reference.

(3) OAR Chapter 635, Division 071 incorporates, by reference, the requirements for hunting Rocky Mountain elk set out in the document entitled "2004 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2004 Oregon Big Game Regulations" in addition to OAR Chapter 635, to determine all applicable requirements for hunting Rocky Mountain elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 42-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 1-2004(Temp), f. & cert. ef. 1-13-04 thru 7-9-04; DFW 53-2004, f. & cert. ef. 6-16-04

635-073-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for bow and muzzleloader hunting and controlled deer and elk youth hunts; pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2004 for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 073 by reference.

(3) OAR chapter 073 incorporates, by reference, the requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts set out in the document entitled "2004 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2004 Oregon Big Game Regulations," in addition to OAR chapter 635, to determine all applicable requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 21-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 53-2004, f. & cert. ef. 6-16-04

635-073-0065

Early Western Oregon Bowhunting Seasons

(1) General Bowhunting Seasons — Western Oregon.

(a) Bag Limit: One buck deer having not less than a forked antler and one elk;

(b) Open Season: August 28-September 26, 2004;

(c) Hunt Area: The Tioga, Dixon, Sixes, Powers, Evans Creek, Rogue, Chetco, and Applegate units;

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(2) General Bowhunting Seasons — Western Oregon.

- (a) Bag Limit: One deer and one elk;
- (b) Open Season: August 28-September 26, 2004;

(c) Hunt Area: The Saddle Mountain, Scappoose, Wilson, Trask, Willamette, Santiam, Stott Mountain, Alsea, McKenzie, Siuslaw, Indigo, and Melrose units.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: DFW 53-2004, f. & cert. ef. 6-16-04

635-073-0070

Early Eastern Oregon Bowhunting Seasons

(1) General Bowhunting Seasons — Eastern Oregon.

- (a) Bag Limit: One buck deer having a visible antler and one elk;
- (b) Open Season: August 28 — September 26, 2004;

(c) Hunt Area: The Grizzly, Maupin, Metolius, Upper Deschutes, Paulina, Sprague, Fort Rock, Heppner, Keno, Klamath Falls, Interstate, Warner, Wagonfire, Juniper, Beatys Butte, Steens Mountain, Owyhee, Malheur River, Silvies, Maury, Ochoco, Murderers Creek, Beulah, Fossil, Northside, Desolation, Ukiah, Starkey, Mt. Emily, Walla Walla, Wenaha, Sled Springs, Chesnimnus, Minam, Catherine Creek, Sumpter, Lookout Mountain, Keating, Pine Creek, Imnaha, Snake River, and Whitehorse units and that part of the White River Unit within the Mt. Hood National Forest except that: That part of the Whitehorse Unit south of Whitehorse Ranch Rd. and west of US Hwy 95 (Trout Creek Mts.), is closed to deer bowhunting during the general bowhunting season unless the hunter has a Trout Creek Mts. controlled bow deer tag. Approximately 40 square miles of the Starkey Experimental Forest within the Starkey Unit shall be closed to all bowhunting. The Chesnimnus Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Chesnimnus controlled bow elk tag (used or unused). The Chesnimnus Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Chesnimnus elk bow tag. The Sled Springs Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Sled Springs controlled bow elk tag (used or unused). The Sled Springs Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Sled Springs elk bow tag. In the Walla Walla and Mt. Emily units, the bag limit is one antlerless elk or one spike bull elk having at least one antler that is a spike above the ears; in the Wenaha Unit, the bag limit is one spike bull elk only;

(2) General Bowhunting Seasons—Eastern Oregon.

- (a) Bag Limit: One deer and one elk;
- (b) Open Season: August 28-September 26, 2004;
- (c) Hunt Area: The Hood, Biggs, Silver Lake, and Columbia Basin (in those portions of the unit open for bow hunting) units and that part of the White River Unit outside the Mt. Hood National Forest except that: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Heppner, north and west on State Hwy 74 to Lexington; north and east on State Hwy 207 to Butter Creek Junction; south on Butter Creek Road to Hwy 74 at Vinson; west on Hwy 74 to Heppner, point of beginning.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 57-2001, f. & cert. ef. 7-6-01; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04

Adm. Order No.: DFW 54-2004(Temp)

Filed with Sec. of State: 6-16-2004

Certified to be Effective: 6-17-04 thru 7-31-04

Notice Publication Date:

Rules Adopted: 635-041-0095

Subject: Adopt rule to establish a summer commercial fishery for chinook, steelhead, walleye, carp and shad, by platform and hook-and-line, within Zone 6, for Treaty Indian fishers in the Columbia River. Implementation consistent with action taken June 14, 2004, by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-041-0095

Summer Salmon Season

(1) Chinook, steelhead, walleye, carp and shad maybe taken for commercial purposes from mainstem Columbia River, Zone 6, beginning 6

a.m., Thursday, June 17, 2004 through 12 midnight, Saturday, July 31, 2004.

(a) Closed areas set forth in OAR 635-041-0035, except the Spring Creek sanctuary.

(b) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for subsistence use. Also, sturgeon from the Bonneville Pool between 45-60 inches in length may be kept for subsistence use.

(2) Gear is restricted to subsistence fishing gear; hoopnets, dipnets, rod and reel with hook-and-line.

(3) Commercial sale of fish taken in the Wind, Klickitat and Big White Salmon river tributaries is allowed during this open commercial period as identified in (1).

Stat. Auth.: ORS 496.118, 506.119
Stats. Implemented: ORS 506.109, 506.129, 507.030
Hist.: DFW 54-2004(Temp), f. 6-16-04, cert. ef. 6-17-04 thru 7-31-04

Adm. Order No.: DFW 55-2004(Temp)

Filed with Sec. of State: 6-16-2004

Certified to be Effective: 6-19-04 thru 7-5-04

Notice Publication Date:

Rules Amended: 635-019-0090

Subject: Amend rules to open a portion of the Imnaha River to angling for adipose fin-clipped spring chinook salmon.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-019-0090

Inclusions and Modifications

(1) The 2004 Oregon Sport Fishing provide requirements for the Northeast 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 Umatilla River from Highway 730 Bridge upstream to Three Mile Dam is open to angling for spring chinook effective May 22, 2004 through May 31, 2004.

(3) The Imnaha River from the mouth upstream to the Summit Creek Bridge is open to angling for hatchery chinook salmon beginning Saturday, June 19, 2004 through Monday, 12 midnight, July 5, 2004.

(a) The daily bag limit is two adult adipose fin-clipped salmon and five adipose fin-clipped jack salmon.

(b) Nonadipose fin-clipped chinook salmon must be immediately released unharmed.

(4) All other specifications and restrictions as outlined in the current 2004 Oregon Sport Fishing Regulations apply.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04

Adm. Order No.: DFW 56-2004(Temp)

Filed with Sec. of State: 6-18-2004

Certified to be Effective: 6-19-04 thru 9-30-04

Notice Publication Date:

Rules Amended: 635-003-0076

ADMINISTRATIVE RULES

Rules Suspended: 635-003-0076(T)

Subject: Amend regulations to re-open the commercial troll fishery North of Cape Falcon and close the commercial troll fishery Humbug Mountain to the Oregon/California Border.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-003-0076

US-Canada Border to Cape Falcon, May/June All Salmon - Except Coho Season and July-September All Species Season

(1) Vessels must land their fish within the area or in Garibaldi, Oregon, and within 24 hours of any closure of this fishery. Oregon licensed limited fish sellers and fishers intending to transport and deliver their catch outside the area must notify ODFW one hour prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

(2) The commercial troll fishery season, as described above in (1), is open effective Saturday, 12:01 a.m., June 26, 2004, through Wednesday, 11:59 p.m., June 30, 2004. Per vessel, there is a fifty (50) fish landing and possession limit for the entire five-day period.

(3) **Humbug Mountain to the Oregon/California Border, June-September All-Salmon - Except Coho Season.** Vessels must land their fish in Gold Beach, Port Orford, or Brookings, Oregon, and within 24 hours of any closure. Fishers intending to transport and deliver their catch to other locations after first landing in one of these ports must notify ODFW prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

(4) The commercial troll fishery season, as described above in (3), is closed effective 12 midnight, Saturday, June 19, 2004.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 506.129

Hist.: FWC 37-1990, f. & cert. ef. 5-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; DFW 34-2001, f. & cert. ef. 5-10-01; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 38-2004(Temp), f. & cert. ef. 5-5-04 thru 6-30-04; DFW 42-2004(Temp), f. 5-14-04, cert. ef. 5-15-04 thru 6-30-04; DFW 45-2004(Temp), f. 5-21-04, cert. ef. 5-24-04 thru 6-30-04; DFW 56-2004(Temp), f. 6-18-04, cert. ef. 6-19-04 thru 9-30-04

Adm. Order No.: DFW 57-2004(Temp)

Filed with Sec. of State: 6-22-2004

Certified to be Effective: 6-23-04 thru 7-31-04

Notice Publication Date:

Rules Amended: 635-041-0095

Rules Suspended: 635-041-0095(T)

Subject: Amend rule to allow a Treaty Indian commercial gill net fishery for summer chinook salmon, within Zone 6, in the Columbia River. Implementation consistent with action taken June 18, 2004, by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-041-0095

Summer Salmon Season

(1) Chinook, steelhead, walleye, carp and shad may be taken for commercial purposes from mainstem Columbia River, Zone 6, beginning 6 a.m., Thursday, June 17, 2004 through 12 midnight, Saturday, July 31, 2004.

(a) Closed areas set forth in OAR 635-041-0035, except the Spring Creek sanctuary.

(b) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for subsistence use. Also, sturgeon from the Bonneville Pool between 45-60 inches in length may be kept for subsistence use.

(c) Gear is restricted to subsistence fishing gear; hoopnets, dipnets, rod and reel with hook-and-line.

(2) Chinook, steelhead, walleye, carp and shad may be taken for commercial purposes from mainstem Columbia River, Zone 6, beginning 6 a.m., Wednesday, June 23, 2004 until 6 pm Friday, June 25, 2004.

(a) Closed areas set forth in OAR 635-041-0035, except the Spring Creek sanctuary.

(b) Sockeye may not be sold but may be kept for subsistence use. Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for subsistence use. Also, sturgeon from the Bonneville Pool between 45-60 inches in length may be kept for subsistence use.

(c) Gear is restricted to gill nets with a minimum mesh size of 7 inches.

(3) Commercial sale of fish taken in the Wind, Klickitat and Big White Salmon river tributaries is allowed during the open commercial periods as identified in (1) and (2).

Stat. Auth.: ORS 496.118, 506.119

Stats. Implemented: ORS 506.109, 506.129, 507.030

Hist.: DFW 54-2004(Temp), f. 6-16-04, cert. ef. 6-17-04 thru 7-31-04; DFW 57-2004(Temp), f. 6-22-04, cert. ef. 6-23-04 thru 7-31-04

Adm. Order No.: DFW 58-2004(Temp)

Filed with Sec. of State: 6-24-2004

Certified to be Effective: 6-27-04 thru 12-23-04

Notice Publication Date:

Rules Amended: 635-023-0090

Rules Suspended: 635-023-0090(T)

Subject: Amend sturgeon rules to implement closure on the mainstem Columbia River from The Dalles Dam to the John Day Dam.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0090

Inclusions and Modifications

(1) The **2004 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, all adjacent Washington tributaries, and the Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

(a) Sunday, February 1, 2004 through Saturday, July 31, 2004, and

(b) Friday, October 1, 2004 through Friday, December 31, 2004.

(3) The Columbia River from Beacon Rock upstream to Bonneville Dam is closed to all sturgeon angling effective Saturday, May 1, 2004 through Sunday, July 31, 2004.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay, and all adjacent Washington tributaries, is open to the retention of sturgeon seven days per week during the following periods:

(a) Thursday, January 1, 2004 through Friday, April 30, 2004, and

(b) Saturday, May 15, 2004 through Friday, July 23, 2004.

(5) During the fishing period as identified in section (4)(b) of this rule, only sturgeon 45-60" in overall length may be retained.

(6) The Columbia River from the Bonneville Dam upstream to The Dalles Dam including the tributaries between the dams is closed to the retention of sturgeon effective 12 midnight, Friday, June 25, 2004. Catch and release of sturgeon is allowed. All sturgeon must be immediately released unharmed.

(7) The Columbia River from The Dalles Dam upstream to John Day Dam including tributaries between the dams is closed to the retention of sturgeon effective 11:59 p.m. Sunday, June 27, 2004. Catch and release of sturgeon is allowed. All sturgeon must be immediately released unharmed.

(8) 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.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru

ADMINISTRATIVE RULES

4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-27, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64 2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72 2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4 2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04

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Adm. Order No.: DFW 59-2004(Temp)
Filed with Sec. of State: 6-28-2004
Certified to be Effective: 7-1-04 thru 9-30-04
Notice Publication Date:

Rules Amended: 635-003-0076
Rules Suspended: 635-003-0076(T)
Subject: Amend regulation to re-open the commercial troll fishery from Humbug Mountain to the Oregon/California Border.
Rules Coordinator: Katie Thiel—(503) 947-6033

635-003-0076

US-Canada Border to Cape Falcon, May/June All Salmon - Except Coho Season and July-September All Species Season

(1) Vessels must land their fish within the area or in Garibaldi, Oregon, and within 24 hours of any closure of this fishery. Oregon licensed limited fish sellers and fishers intending to transport and deliver their catch outside the area must notify ODFW one hour prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

(2) The commercial troll fishery season, as described above in (1), is open effective Saturday, 12:01 a.m., June 26, 2004, through Wednesday, 11:59 p.m., June 30, 2004. Per vessel, there is a fifty (50) fish landing and possession limit for the entire five-day period.

(3) **Humbug Mountain to the Oregon/California Border, June-September All-Salmon - Except Coho Season.** Vessels must land their fish in Gold Beach, Port Orford, or Brookings, Oregon, and within 24 hours of any closure. Fishers intending to transport and deliver their catch to other locations after first landing in one of these ports must notify ODFW prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

(4) The commercial troll fishery season, as described above in (3), is closed effective 12 midnight, Saturday, June 19, 2004.

(5) The commercial troll fishery season, as described above in (3), will re-open effective July 1, 2004.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: 506.129

Hist.: FWC 37-1990, f. & cert. ef. 5-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; DFW 34-2001, f. & cert. ef. 5-10-01; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 38-2004(Temp), f. & cert. ef. 5-5-04 thru 6-30-04; DFW 42-2004(Temp), f. 5-14-04, cert. ef. 5-15-04 thru 6-30-04; DFW 45-2004(Temp), f. 5-21-04, cert. ef. 5-24-04 thru 6-30-04; DFW 56-2004(Temp), f. 6-18-04, cert. ef. 6-19-04 thru 9-30-04; DFW 59-2004(Temp), f. 6-28-04, cert. ef. 7-1-04 thru 9-30-04

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Adm. Order No.: DFW 60-2004(Temp)
Filed with Sec. of State: 6-29-2004
Certified to be Effective: 7-1-04 thru 7-15-04

Notice Publication Date:
Rules Amended: 635-014-0090
Subject: Amend rule to allow Three Rivers to remain open to angling.
Rules Coordinator: Katie Thiel—(503) 947-6033

635-014-0090

Inclusions and Modifications

(1) The **2004 Oregon Sport Fishing Regulations** provide requirements for the Northwest 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) Three Rivers, tributary of the Nestucca, from the mouth upstream to the hatchery weir, is open to angling for fin-clipped spring chinook and adipose fin-clipped steelhead beginning July 1, 2004 through July 15, 2004.

(3) All other specification and restrictions as outlined in the current **2004 Oregon Sport Fishing Regulation** apply.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04

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Adm. Order No.: DFW 61-2004(Temp)
Filed with Sec. of State: 6-29-2004
Certified to be Effective: 6-30-04 thru 9-30-04

Notice Publication Date:
Rules Adopted: 635-023-0126
Subject: Adopt rule to open summer sport sockeye fishery on the mainstem Columbia River.
Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0126

Summer 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 from the Tongue Point/Rocky Point line upstream to the Highway 395 Bridge in Pasco, Washington, is open to the retention of sockeye effective June 30, 2004 through September 30, 2004.

(3) All other specifications and restrictions as outlined in the current **2004 Oregon Sport Fishing Regulations** apply.

Stat. Auth.: ORS 496.138, 496.146 and ORS 506.119

ADMINISTRATIVE RULES

Stats. Implemented: ORS 496.162, 506.129
Hist.: DFW 61-2004(Temp), f. 6-29-04, cert. ef. 9-30-04

Adm. Order No.: DFW 62-2004(Temp)

Filed with Sec. of State: 6-29-2004

Certified to be Effective: 6-30-04 thru 7-31-04

Notice Publication Date:

Rules Amended: 635-041-0095

Rules Suspended: 635-041-0095(T)

Subject: Amend rule to allow a Treaty Indian commercial gill net fishery targeting sockeye and chinook within Zone 6, in the Columbia River. Implementation consistent with action taken June 28, 2004, by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-041-0095

Summer Salmon Season

(1) Chinook, steelhead, sockeye, walleye, carp, and shad may be taken for commercial purposes from mainstem Columbia River, Zone 6, beginning 6 a.m., June 30, 2004 through 12 midnight, Saturday, July 31, 2004.

(a) Closed areas set forth in OAR 635-041-0035, except the Spring Creek sanctuary.

(b) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for subsistence use. Also, sturgeon from the Bonneville Pool between 45-60 inches in length may be kept for subsistence use.

(c) Gear is restricted to subsistence fishing gear; hoopnets, dipnets, rod and reel with hook-and-line.

(2) Chinook, steelhead, coho, sockeye, walleye, carp and shad may be taken for commercial purposes from mainstem Columbia River, Zone 6, beginning 6 a.m., Wednesday, June 30, 2004 until 6 p.m., Friday, July 2, 2004.

(a) Closed areas set forth in OAR 635-041-0035, except the Spring Creek sanctuary.

(b) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for subsistence use. Also, sturgeon from the Bonneville Pool between 45-60 inches in length may be kept for subsistence use.

(3) Commercial sale of fish taken in the Klickitat and Big White Salmon river tributaries is allowed during the open commercial periods as identified in (1) and (2).

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & ORS 507.030

Hist.: DFW 54-2004(Temp), f. 6-16-04, cert. ef. 6-17-04 thru 7-31-04; DFW 57-2004(Temp), f. 6-22-04, cert. ef. 6-23-04 thru 7-31-04; DFW 62-2004(Temp), f. 6-29-04, cert. ef. 6-30-04 thru 7-31-04

Adm. Order No.: DFW 63-2004(Temp)

Filed with Sec. of State: 6-29-2004

Certified to be Effective: 6-30-04 thru 7-3-04

Notice Publication Date:

Rules Amended: 635-042-0025

Subject: Amend rule related to allow commercial sockeye fishing in the Columbia River. Implementation consistent with action taken June 28, 2004 by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0025

Sockeye Season

(1) Sockeye, adipose fin-clipped chinook and coho, shad and sturgeon may be taken for commercial purposes from the mouth of the Columbia River upstream to the Longview Bridge from 6 a.m. to 6 p.m. on Wednesday, June 30, 2004 and from 6 a.m. to 6 p.m. on Friday, July 2, 2004.

(2) Gear is restricted to a single-wall floater gill net. Mesh size will not exceed 4-1/2 inches. Gill nets may not exceed 175 fathoms in length.

(3) 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.

(4) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(5) 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.

(6) 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.

(7) It is unlawful to fish more than one net from a licensed commercial fishing boat at any one time.

(8) Nonlegal sturgeon, nonadipose fin-clipped chinook salmon, coho salmon and all 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.

(9) 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 sockeye fishery. The fact that an individual may hold a tangle net certificate in 2004 does not entitle the certificate holder to participate in any other fishery. If ODFW authorizes a tangle net fishery in 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.

(10) Closed waters, as described in OAR 635-042-0005, for Grays River, Elokomin-A, Big Creek and Gnat Creek, are in effect during the open fishing period as described.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 27-1984(Temp), f. & ef. 6-22-84; FWC 28-1985 (Temp), f. & ef. 6-21-85; FWC 24-1986, f. & ef. 6-20-86; FWC 30-1987, f. & ef. 6-19-87; FWC 32-1987(Temp), f. & ef. 6-23-87; FWC 35-1987(Temp), f. & ef. 6-29-87; FWC 48-1988, f. & cert. ef. 6-21-88; FWC 49-1988(Temp), f. & cert. ef. 6-23-88; DFW 36-2000(Temp), f. 6-28-00, cert. ef. 6-28-00 thru 7-1-00; Administrative correction 6-21-01; DFW 51-2001(Temp), f. 6-22-01, cert. ef. 6-25-01 thru 6-28-01; DFW 54-2001(Temp), f. & cert. ef. 6-27-01 thru 6-28-01; DFW 63-2004(Temp), f. 6-29-04, cert. ef. 6-30-04 thru 7-3-04

Adm. Order No.: DFW 64-2004(Temp)

Filed with Sec. of State: 6-30-2004

Certified to be Effective: 7-3-04 thru 12-30-04

Notice Publication Date:

ADMINISTRATIVE RULES

Rules Amended: 635-023-0090

Rules Suspended: 635-023-0090(T)

Subject: Amend sturgeon rules to implement closure on the main-stem Columbia River from Wauna powerlines downstream.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0090

Inclusions and Modifications

(1) The **2004 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, all adjacent Washington tributaries, and the Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

- (a) Sunday, February 1, 2004 through Saturday, July 31, 2004, and
- (b) Friday, October 1, 2004 through Friday, December 31, 2004.

(3) The Columbia River from Beacon Rock upstream to Bonneville Dam is closed to all sturgeon angling effective Saturday, May 1, 2004 through Sunday, July 31, 2004.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay, and all adjacent Washington tributaries, is open to the retention of sturgeon seven days per week during the following periods:

- (a) Thursday, January 1, 2004 through Friday, April 30, 2004, and
- (b) Saturday, May 15, 2004 through 11:59 p.m., Saturday, July 3, 2004.

(5) During the fishing period as identified in section (4)(b) of this rule, only sturgeon 45-60" in overall length may be retained.

(6) The Columbia River from the Bonneville Dam upstream to The Dalles Dam including the tributaries between the dams is closed to the retention of sturgeon effective 12 midnight, Friday, June 25, 2004. Catch and release of sturgeon is allowed. All sturgeon must be immediately released unharmed.

(7) The Columbia River from The Dalles Dam upstream to John Day Dam including tributaries between the dams is closed to the retention of sturgeon effective 11:59 p.m. Sunday, June 27, 2004. Catch and release of sturgeon is allowed. All sturgeon must be immediately released unharmed.

(8) 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.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-27, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. &

cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64 2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72 2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4 2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-30-04

Adm. Order No.: DFW 65-2004(Temp)

Filed with Sec. of State: 7-6-2004

Certified to be Effective: 7-11-04 thru 12-31-04

Notice Publication Date:

Rules Amended: 635-023-0090

Rules Suspended: 635-023-0090(T)

Subject: Amend sturgeon rules to implement closure on the main-stem Columbia River from the John Day Dam to the McNary Dam.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0090

Inclusions and Modifications

(1) The **2004 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, all adjacent Washington tributaries, and the Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

- (a) Sunday, February 1, 2004 through Saturday, July 31, 2004; and
- (b) Friday, October 1, 2004 through Friday, December 31, 2004.

(3) The Columbia River from Beacon Rock upstream to Bonneville Dam is closed to all sturgeon angling effective Saturday, May 1, 2004 through Sunday, July 31, 2004.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay, and all adjacent Washington tributaries, is open to the retention of sturgeon seven days per week during the following periods:

- (a) Thursday, January 1, 2004 through Friday, April 30, 2004; and
- (b) Saturday, May 15, 2004 through 11:59 p.m., Saturday, July 3, 2004.

(5) During the fishing period as identified in section (4)(b) of this rule, only sturgeon 45-60" in overall length may be retained.

(6) The Columbia River from the Bonneville Dam upstream to The Dalles Dam including the tributaries between the dams is closed to the retention of sturgeon effective 12 midnight, Friday, June 25, 2004. Catch and release of sturgeon is allowed. All sturgeon must be immediately released unharmed.

(7) The Columbia River from The Dalles Dam upstream to John Day Dam including tributaries between the dams is closed to the retention of sturgeon effective 11:59 p.m. Sunday, June 27, 2004. Catch and release of sturgeon is allowed. All sturgeon must be immediately released unharmed.

(8) The Columbia River from the John Day Dam upstream to the McNary Dam including tributaries between the dams is closed to the retention of sturgeon effective 11:59 p.m., Sunday, July 11, 2004. Catch and

ADMINISTRATIVE RULES

release of sturgeon is allowed. All sturgeon must be immediately released unharmed.

(9) 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.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 22-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-27, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64-2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72-2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-30-04; DFW 65-2004(Temp), f. 7-6-04, cert. ef. 7-11-04 thru 12-31-04

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Adm. Order No.: DFW 66-2004(Temp)

Filed with Sec. of State: 7-6-2004

Certified to be Effective: 7-8-04 thru 9-30-04

Notice Publication Date:

Rules Amended: 635-003-0076

Rules Suspended: 635-003-0076(T)

Subject: Amend regulation to re-open the commercial troll fishery from the US-Canada Border to Cape Falcon.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-003-0076

US-Canada Border to Cape Falcon, May/June All Salmon - Except Coho Season and July-September All Species Season

(1) Vessels must land their fish within the area or in Garibaldi, Oregon, and within 24 hours of any closure of this fishery. Oregon licensed limited fish sellers and fishers intending to transport and deliver their catch outside the area must notify ODFW one hour prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

(2) The commercial troll fishery season, as described above in (1), is open effective Saturday, 12:01 a.m., June 26, 2004, through Wednesday, 11:59 p.m., June 30, 2004. Per vessel, there is a fifty (50) fish landing and possession limit for the entire five-day period.

(3) The commercial troll fishery season, as described above in (1), is open effective Thursday, 12:01 a.m., July 8, 2004, through Monday, 11:59 p.m., July 12, 2004. Per vessel, there is an one-hundred (100) chinook landing and possession limit for the entire five-day period.

(4) The commercial troll fishery season, as described above in (1), is open effective Friday, 12:01 a.m., July 16, 2004, through Monday, 11:59 p.m., July 19, 2004. Per vessel, there is an one-hundred (100) chinook landing and possession limit for the entire four-day period.

(5) **Humboldt Mountain to the Oregon/California Border, June-September All Salmon - Except Coho Season.** Vessels must land their fish in Gold Beach, Port Orford, or Brookings, Oregon, and within 24 hours of any closure. Fishers intending to transport and deliver their catch to other locations after first landing in one of these ports must notify ODFW prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

(6) The commercial troll fishery season, as described above in (5), is closed effective 12 midnight, Saturday, June 19, 2004.

(7) The commercial troll fishery season, as described above in (5), will re-open effective July 1, 2004.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 506.129

Hist.: FWC 37-1990, f. & cert. ef. 5-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; DFW 34-2001, f. & cert. ef. 5-10-01; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 38-2004(Temp), f. & cert. ef. 5-5-04 thru 6-30-04; DFW 42-2004(Temp), f. 5-14-04, cert. ef. 5-15-04 thru 6-30-04; DFW 45-2004(Temp), f. 5-21-04, cert. ef. 5-24-04 thru 6-30-04; DFW 56-2004(Temp), f. 6-18-04, cert. ef. 6-19-04 thru 9-30-04; DFW 59-2004(Temp), f. 6-28-04, cert. ef. 7-1-04 thru 9-30-04; DFW 66-2004(Temp), f. 7-6-04, cert. ef. 7-8-04 thru 9-30-04

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Adm. Order No.: DFW 67-2004

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Rules Amended: 635-050-0045, 635-050-0070, 635-050-0080, 635-050-0090, 635-050-0100, 635-050-0110, 635-050-0120, 635-050-0130, 635-050-0140, 635-050-0150, 635-050-0170, 635-050-0180, 635-050-0183, 635-050-0189, 635-050-0210

Subject: Amended rules regarding seasons and bag limits for the 2004-05 and 2005-06 furbearer harvest and pursuit seasons.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-050-0045

General Furbearer Regulations

The following general regulations apply to furbearer seasons:

(1) Any person possessing a valid furtaker's license or hunting license for furbearers is required to fill out and return a completed harvest report form to the Department at 3406 Cherry Avenue NE, Salem, Oregon 97303. The form shall be postmarked by April 15, 2005 for the 2004-05 seasons and April 15, 2006 for the 2005-06 seasons. Failure to do so shall deny the license holder the opportunity to purchase a hunting license for furbearers or furtakers license for the following furbearer season.

(2) Any person may sell or exchange the hide, carcass, or any part thereof, of any legally taken furbearing or unprotected mammal.

(3) All traps and snares, whether set for furbearing or other unprotected mammals, shall be legibly marked or branded with the owner's license (brand) number that has been assigned by the Department; except that unmarked traps or snares may be set for nongame mammals unprotected by law or Department regulations by any person or member of his immediate family upon land of which he is the lawful owner. A landowner is required to register the location of such land with the Department and

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shall possess each year a free landowner's license before hunting or trapping furbearing mammals.

(4) No branded trap or snare may be sold unless accompanied by a uniform bill of sale.

(5) Bobcat, raccoon and opossum may be hunted with the aid of an artificial light provided the light is not cast from or attached to a motor vehicle or boat.

(6) Use of dogs is permitted to hunt or pursue bobcat, raccoon, fox, and unprotected mammals except in game bird nesting habitat during April, May, June or July, except as authorized by the Fish and Wildlife Commission.

(7) It is unlawful for any person to trap for furbearers or unprotected mammals using:

(a) A steel leghold trap with a jaw spread greater than 9 inches.

(b) A No. 3 or larger leghold trap not having a jaw spacing of at least 3/16 of one inch when the trap is sprung (measurement excludes pads on padded jaw traps) and when the trap is placed in a manner that is not capable of drowning a trapped animal.

(c) The flesh of any game bird, game fish, game mammal for trap bait.

(d) Any instant-kill trap having a jaw spread of 9 inches or more in any land set.

(e) Any toothed trap, or trap with a protuberance on the facing edge of the jaws that is intended to hold the animal (except pads on padded jaw traps).

(f) Or possessing the branded traps or snares of another unless in possession of written permission or a bill of sale from the person to whom the brand is registered.

(g) Sight bait within 15 feet of any leghold trap set for carnivores.

(8) Except for persons authorized to enforce the wildlife laws, it is unlawful to disturb or remove the traps or snares of any licensed trapper while he is trapping on public lands or on land where he has permission to trap.

(9) All traps or snares set or used for the taking of furbearing or unprotected mammals shall be inspected at least every 48 hours and all trapped animals removed. This regulation does not apply to the taking of predatory animals.

(10) Any person setting a trap for predatory animals, as defined in ORS 610.002, must check the trap as follows:

(a) for killing traps and snares, at least once every 30 days and remove all animals;

(b) for restraining traps and snares, at least once every 76 hours and remove all animals. However, restraining traps and snares set by a person owning, leasing, occupying, possessing or having charge of or dominion over any land, place, building, structure, wharf, pier or dock or their agent, and set for predatory animals damaging land, livestock or agricultural or forest crops, shall be checked at least once every 7 days. Any person(s) acting as an agent for a landowner shall have in their possession written authority from the landowner or lawful occupant of the land. Such written authority shall contain at least all of the following:

(A) The date of issuance of the authorization;

(B) The name, address, telephone number and signature of the person granting the authorization;

(C) The name, address and telephone number of the person to whom the authorization is granted; and

(D) The expiration date of the authorization, which shall be not later than one year from the date of issuance of the authorization.

(11) A "killing trap" means a device used to kill a mammal as part of a killing trap system. A killing trap system is a system set with the intent to kill a mammal comprising a combination of: equipment (the trap and trigger configuration), and set (including site modifications, lures, baits, location and other relevant requirements).

(12) A "restraining trap" means a device used to capture and restrain (but not kill) a mammal as part of a restraining trap system. A restraining trap system is a system set with the intent to capture and restrain (but not kill) a mammal comprising a combination of: equipment (the trap and the trigger configuration), and set (including site modifications, lures, baits, location and other relevant requirements).

(13) These general furbearer regulations do not apply to the trapping of gophers, moles, ground squirrels and mountain beaver.

(14) When any furbearer or raw furbearer pelt is transferred to the possession of another person, a written record indicating the name and address of the person from whom the raw pelt was obtained shall accompany such transfer and remain with same so long as preserved in raw pelt form.

(15) It is **unlawful** for any person to damage or destroy any muskrat house at any time except where such muskrat house is an obstruction to a private or public ditch or watercourse.

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

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

Hist.: FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 9-2004, f. & cert. ef. 2-11-04; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0070

Beaver

Open Season: November 15, 2004, through March 15, 2005, and November 15, 2005, through March 15, 2006, in the following described areas:

(1) Clackamas County. All open except waters within the exterior boundaries of Mt. Hood National Forest.

(2) Crook County. All open except Prineville Reservoir below high water line and the Ochoco National Forest.

(3) Curry County. All open except the Rogue River from the east county line to the mouth.

(4) Grant County. All open except within the exterior boundaries of the Ochoco National Forest; Murderer Creek and Deer Creek, tributaries of the South Fork John Day River, within the exterior boundaries of the Malheur National Forest.

(5) Jefferson County. All open except that portion of Willow Creek and its tributaries on the National Grasslands.

(6) Josephine County. All open except Rogue River from the confluence of Grave Creek downstream to the county line.

(7) Umatilla County. All open except the Camas Creek drainage in its entirety and that portion of the North Fork of the Umatilla River and its tributaries that are within the exterior boundaries of the Umatilla National Forest.

(8) Union County. All open except:

(a) Waters inside exterior boundaries of National Forests. However, private inholdings within the National Forest remain open.

(b) Grande Ronde River above Beaver Creek.

(c) All tributaries of the Grande Ronde River above the confluence of Five Points Creek. (Five Points Creek open to the National Forest boundary.)

(9) Wallowa County. All open except:

(a) Wallowa River and tributaries above Wallowa Lake.

(b) Lostine River, Hurricane Creek, Bear Creek and their tributaries above the Wallowa-Whitman National Forest boundary.

(c) Minam River and tributaries.

(d) Peavine Creek, a tributary of Chesnimnus Creek.

(10) Wheeler County. All open except within the exterior boundaries of the Ochoco National Forest and Bridge Creek at its tributaries within the exterior boundaries of Bureau of Land Management lands.

(11) Other counties: All of the following counties are open in their entirety: Baker, Benton, Clatsop, Columbia, Coos, Deschutes, Douglas, Gilliam, Hood River, Harney, Jackson, Klamath, Lake, Lane, Lincoln, Linn, Malheur, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Wasco, Washington and Yamhill.

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

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

Hist.: FWC 21-1981, f. & ef. 6-29-81; FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 58-1983, f. & ef. 10-19-83; FWC 52-1984, f. & ef. 9-5-84; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 79-1988, f. & cert. ef. 9-2-88; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; FWC 65-1996(Temp), f. & cert. ef. 11-21-96; FWC 46-1997, f. & cert. ef. 8-13-97; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0080

Bobcat

(1) The open harvest season for bobcat is December 1, 2004, through February 28, 2005, and December 1, 2005, through February 28, 2006.

(2) The bag limit for bobcat in those counties east of the summit of the Cascade Range (including Hood River and Klamath counties) is seven per season per licensed hunter or trapper.

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

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

Hist.: FWC 151, f. & ef. 10-5-77; FWC 1-1978(Temp), f. & ef. 1-17-78; FWC 10-1978, f. & ef. 3-7-78; FWC 44-1978, f. & ef. 9-1-78; FWC 37-1979, f. & ef. 8-29-79; FWC 35-1980, f. & ef. 7-2-80; FWC 47-1980, f. & ef. 9-17-80; FWC 21-1981, f. & ef. 6-29-81, Renumbered from 635-050-0022; FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 58-1983, f. & ef. 10-19-83; FWC 52-1984, f. & ef. 9-5-84; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC

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43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0090

Gray Fox

(1) Open Season: November 15, 2004, through February 28, 2005, and November 15, 2005, through February 28, 2006.

(2) Open area: Entire state.

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

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

Hist.: FWC 21-1981, f. & ef. 6-29-81; FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 58-1983, f. & ef. 10-19-83; FWC 52-1984, f. & ef. 9-5-84; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0100

Red Fox

Open Seasons and areas are as follows:

(1) Open season entire year in Baker, Gilliam, Harney, Malheur, Morrow, Umatilla, Wallowa and Wheeler counties (Furtaker license is required).

(2) October 15, 2004, through January 15, 2005, and October 15, 2005, through January 15, 2006, in remainder of state.

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

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

Hist.: FWC 21-1981, f. & ef. 6-29-81; FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 58-1983, f. & ef. 10-19-83; FWC 52-1984, f. & ef. 9-5-84; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 79-1988, f. & cert. ef. 9-2-88; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0110

Marten

(1) Open season: November 1, 2004 through January 31, 2005 and November 1, 2005 through January 31, 2006.

(2) Open area: Entire state.

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

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

Hist.: FWC 21-1981, f. & ef. 6-29-81; FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 58-1983, f. & ef. 10-19-83; FWC 52-1984, f. & ef. 9-5-84; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0120

Mink

(1) Open season: November 15, 2004, through March 31, 2005, and November 15, 2005, through March 31, 2006.

(2) Open area: Entire state.

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

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

Hist.: FWC 21-1981, f. & ef. 6-29-81; FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 58-1983, f. & ef. 10-19-83; FWC 52-1984, f. & ef. 9-5-84; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 79-1988, f. & cert. ef. 9-2-88; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0130

Muskrat

(1) Open Season: November 15, 2004, through March 31, 2005, and November 15, 2005, through March 31, 2006.

(2) Open area: Entire state.

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

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

Hist.: FWC 21-1981, f. & ef. 6-29-81; FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 58-1983, f. & ef. 10-19-83; FWC 52-1984, f. & ef. 9-5-84; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0140

Raccoon

(1) Open Season: November 15, 2004, through March 15, 2005, and November 15, 2005, through March 15, 2006.

(2) Open area: Entire state.

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

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

Hist.: FWC 21-1981, f. & ef. 6-29-81; FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 58-1983, f. & ef. 10-19-83; FWC 52-1984, f. & ef. 9-5-84; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0150

River Otter

Open Seasons and areas are as follows: November 15, 2004, through March 15, 2005, and November 15, 2005, through March 15, 2006, in the entire state except Grant county and all areas closed to beaver trapping in OAR 635-050-0070.

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

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

Hist.: FWC 21-1981, f. & ef. 6-29-81; FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 58-1983, f. & ef. 10-19-83; FWC 52-1984, f. & ef. 9-5-84; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0170

Pursuit Seasons

(1) The following pursuit seasons are authorized:

(a) Bobcat: September 1, 2004 through February 28, 2005 and September 1, 2005 through February 28, 2006.

(b) Fox: September 1, 2004 through February 28, 2005 and September 1, 2005 through February 28, 2006.

(c) Raccoon: September 1, 2004 through March 15, 2005 and September 1, 2005 through March 15, 2006.

(2) License Requirements: Furtaker's license or hunting license for furbearers shall be on one's person during pursuit.

(3) No animals shall be killed except during authorized open harvest season.

(4) A bobcat record card shall be on one's person while taking or attempting to take bobcat.

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

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

Hist.: FWC 35-1980, f. & ef. 7-2-80; FWC 21-1981, f. & ef. 6-29-81, Renumbered from 635-050-0026; FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 58-1983, f. & ef. 10-19-83; FWC 52-1984, f. & ef. 9-5-84; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 79-1988, f. & cert. ef. 9-2-88; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 61-2001, f. & cert. ef. 7-25-01; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0180

Bobcat and River Otter Record Cards

(1) Each person desiring to hunt or trap bobcat or river otter shall purchase a bobcat or river otter record card prior to hunting or trapping bobcat or river otter.

(2) Bobcat record cards will be available for a fee of \$11.50 per card.

(3) River otter record cards will be available for a fee of \$6.50 per card.

(4) Record cards will be available at the Salem headquarters and regional offices of the Department.

(5) River otter cards will have spaces for recording 15 river otters. There is no limit on the purchase of river otter record cards.

(6) Each western Oregon bobcat record card will have spaces for recording 15 bobcats. There is no limit on purchase of western Oregon bobcat record cards.

(7) Each eastern Oregon bobcat record card will have spaces for recording seven bobcats.

(8) No more than one card for seven eastern Oregon bobcats will be issued any furtaker or hunter. A duplicate card may be issued, but no more than seven eastern Oregon bobcats may be taken in a season.

(9) No person may obtain or possess both eastern and western Oregon bobcat record cards.

(10) Bobcat and river otter record cards shall not be sold after the end of their respective seasons.

(11) Each furtaker shall have the appropriate record card on his person while trapping or hunting bobcat or river otter.

(12) Furtakers shall not have record cards other than their own on their person while in the field.

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(13) Upon coming into possession of any bobcat or river otter, the furtaker shall immediately write on the record card, species, sex, date of possession and county of harvest.

(14) Each furtaker shall retain the record card until he disposes of the raw pelts.

(15) Fees paid for unused record cards shall not be refunded.

(16) It is *unlawful* to alter or be in possession of an altered bobcat or river otter record card.

(17) Each licensee shall register a brand number to obtain a bobcat or river otter record card.

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

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

Hist.: FWC 140, f. & ef. 8-29-77; FWC 165, f. & ef. 12-23-77; FWC 44-1978, f. & ef. 9-1-78; FWC 37-1979, f. & ef. 8-29-79; FWC 53-1979(Temp), f. & ef. 11-6-79; FWC 54-1979(Temp), f. & ef. 11-8-79; FWC 60-1979(Temp), f. & ef. 12-18-79; FWC 2-1980(Temp), f. & ef. 1-8-80; FWC 35-1980, f. & ef. 7-2-80; FWC 21-1981, f. & ef. 6-29-81, Renumbered from 635-050-0025(1); FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 52-1984, f. & ef. 9-5-84; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 79-1988, f. & cert. ef. 9-2-88; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0183

Bobcat and River Otter Ownership Tags

(1) The ownership tag shall be affixed by Department personnel at district and regional offices and shall remain so affixed while the pelt is in raw form.

(2) Ownership tags may be used as foreign export tags.

(3) Each ownership tag authorizes the holder to sell one bobcat or river otter.

(4) Each person shall have an ownership tag affixed to his or her bobcat or river otter pelt at a Department district or regional office within 5 business days after the season ends.

(5) It shall be *unlawful* to possess a 2004-05 or 2005-06 harvested bobcat or river otter after 5 business days following the season closure without an ownership tag.

(6) It shall be *unlawful* to sell or remove from the state a 2004-05 or 2005-06 harvested bobcat or river otter pelt without the respective year's ownership tag.

(7) A furtaker shall be responsible for presenting the lower jawbone and information on sex, date of catch and county of harvest with each individual Oregon bobcat and river otter to qualify for ownership tags.

(8) The record card with the required information including species, sex, date of possession and county shall be presented to obtain an ownership tag.

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

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

Hist.: FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 52-1984, f. & ef. 9-5-84; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 79-1988, f. & cert. ef. 9-2-88; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0189

Special Bobcat and River Otter Regulations

(1) Raw pelts taken prior to September 1, 1982, may not be sold unless they were metal-sealed by the Oregon State Police or the Department prior to that date.

(2) Those persons failing to comply with 2004-05 or 2005-06 Special Bobcat and River Otter Regulations shall not be issued a license for the following furbearer season and shall be subject to the penalties provided in ORS 496.992.

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

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

Hist.: FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 52-1984, f. & ef. 9-5-84; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 79-1988, f. & cert. ef. 9-2-88; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 67-2004, f. & cert. ef. 7-13-04

635-050-0210

Areas Closed to Hunting or Trapping

It is *unlawful* to hunt or trap furbearing mammals or unprotected mammals on the following areas except as authorized by permit or as provided in section (21) of this section:

(1) Cemeteries;

(2) City and municipal watersheds declared to be refuges;

(3) Enterprise Wildlife Area, south of U.P. Railroad, and Marr tract;

(4) Federal refuges;

(5) Denman Wildlife Area;

(6) Fern Ridge Wildlife Area;

(7) Irrigon Wildlife Area;

(8) Jewell Meadows Wildlife Area;

(9) Klamath Wildlife Area;

(10) Ladd Marsh Wildlife Area;

(11) McDonald Forest (Benton County);

(12) Public campgrounds;

(13) National, state and public parks;

(14) Rimrock Springs Wildlife Area;

(15) Sauvie Island Wildlife Area;

(16) School lands;

(17) Summer Lake Wildlife Area;

(18) E.E. Wilson Wildlife Area;

(19) Within city boundaries (note, however, that ORS 498.012 allows landowners and their agents to trap for the purpose of dealing with certain types of damage, public nuisance and public health risk. This authority overrides the restriction on trapping within cities);

(20) Tillicum Natural Area.

(21) Notwithstanding section (19) of this rule, trapping furbearing and unprotected mammals is permitted within incorporated city limits as follows:

(a) Warrenton, except within 100 yards of any residential building or within the boundaries of Fort Stevens State Park;

(b) Klamath Falls, on a person's own property for muskrat and beaver;

(c) Bend, as approved and permitted by the Department;

(d) Cottage Grove; applicants must submit written request to the City of Cottage Grove for a trapping permit.

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

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

Hist.: FWC 140, f. & ef. 8-29-77; FWC 44-1978, f. & ef. 9-1-78; FWC 37-1979, f. & ef. 8-29-79; FWC 35-1980, f. & ef. 7-2-80; FWC 45-1980, f. & ef. 8-28-80; FWC 21-1981, f. & ef. 6-29-81, Renumbered from 635-050-0037; FWC 43-1982, f. & ef. 7-9-82; FWC 27-1983, f. & ef. 7-8-83; FWC 65-1983(Temp), f. & ef. 11-22-83; FWC 9-1984, f. & ef. 3-12-84; FWC 52-1984, f. & ef. 9-5-84; FWC 44-1985, f. & ef. 8-22-85; FWC 48-1986, f. & ef. 8-28-86; FWC 79-1988, f. & cert. ef. 9-2-88; FWC 59-1989, f. & cert. ef. 8-15-89; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 67-2004, f. & cert. ef. 7-13-04

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Adm. Order No.: DFW 68-2004

Filed with Sec. of State: 7-13-2004

Certified to be Effective: 7-13-04

Notice Publication Date: 6-1-04

Rules Amended: 635-090-0140, 635-090-0150, 635-090-0160

Subject: Amended rules regarding the Access and Habitat Program 2005 Deer and Elk Auction and Raffle Tag Program.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-090-0140

Deer and Elk Tag Auction and Raffle

(1) Notwithstanding ORS 496.146(10), upon the recommendation of the Access and Habitat Board, the commission may issue each year up to ten elk and ten deer tags to hunt deer or elk. Recommendations from the board shall include:

(a) The land on which each tag shall be used;

(b) The percentage of funds (not to exceed 50 percent) received from the tags that may revert to the landowner if the tag is limited to private land; and

(c) A written agreement with the commission which provides public access and habitat improvements.

(2) The board may contract with a sportsman's group or other organization to conduct a raffle or an auction to issue the access and habitat deer and elk tags.

(3) The access and habitat raffle and/or auction deer and elk tags are in addition to all other tags and permits approved by the commission.

(a) In addition to the number of deer and elk tags legally available to an individual, an individual is allowed one additional elk and one additional deer tag annually, provided these tags are Access and Habitat auction or raffle tags.

(b) Hunting hours, open season, and open area will be determined by the board specific to the tag.

(c) Bag limit: one deer or one elk.

(4) Access and habitat deer/elk tag raffle requirements:

(a) There is no limit on the number of tickets a person may purchase. Raffle tickets shall be available for purchase in the following denominations with the addition of a \$1.50 license agent fee:

ADMINISTRATIVE RULES

(A) Deer Tags:

- (i) One ticket at a cost of \$2.50.
- (ii) Six tickets at a cost of \$9.50.
- (iii) Fifteen tickets at a cost of \$19.50.
- (iv) Forty tickets at a cost of \$49.50.
- (v) One hundred tickets at a cost of \$99.50.

(B) Elk tags:

- (i) One ticket at a cost of \$4.50.
 - (ii) Six tickets at a cost of \$19.50.
 - (iii) Fifteen tickets at a cost of \$39.50.
 - (iv) Forty tickets at a cost of \$99.50.
- (C) Combination Elk and Deer Tags
- (i) One ticket at a cost of \$9.50.
 - (ii) Six tickets at a cost of \$29.50.
 - (iii) Fifteen tickets at a cost of \$59.50.
 - (iv) Forty tickets at a cost of \$149.50.

(b) Raffle tickets in denominations of 1, 6, and 15 will be available to the public through authorized POS license vendors or through the department's Salem headquarters office during the dates specified in the current Big Game Regulations. Tickets in denominations of forty and one hundred will be available only through the department's Salem headquarters office. Tickets also may be sold by department representatives at various public events or meetings of sportsmen and landowners.

(c) Residents and nonresidents shall be eligible to purchase tickets.

(d) There shall be no refunds for any raffle ticket purchases.

(e) Tickets purchased through license agents and submitted for the drawing by mail must be received at the department's Salem headquarters office by the date specified in the current Big Game Regulations. Hand delivered tickets submitted for the drawing must be received by 5pm at the Salem headquarters office no later than two days before the drawing event. Completed tickets delivered to the drawing event must be turned in by the time specified in the current Big Game Regulations. Additional tickets may be purchased at the raffle site prior to the drawing.

(f) All tickets submitted for the drawing must be complete with a name, address, phone number, and hunt number (if applicable).

(g) One winner and a minimum of two alternate winners shall be drawn at a public drawing; time and location to be determined by the board and department.

(h) If a person is drawn as the winner of more than one hunt for the same species, the Department will issue the first Access and Habitat raffle deer/elk tag drawn by the person who meets all criteria specified herein.

(i) The order in which the winner and alternate winners for the deer/elk raffle hunts shall be drawn at the public drawing is as follows:

- (i) Statewide Combination Elk and Deer — #AH002
- (ii) Statewide Deer Hunt — #AH001
- (iii) Southeast Oregon Deer Hunt — #AH004
- (iv) Central Oregon Deer Hunt — #AH005
- (v) Northeast Oregon Deer Hunt — #AH003
- (vi) Statewide Elk Hunt — #AH009
- (vii) Northeast Oregon Elk Hunt — #AH006
- (viii) High Desert Elk Hunt — #AH007
- (ix) Western Oregon Elk Hunt — #AH008

(j) The department will notify the winner and two alternates by mail. The winner must claim the tag during regular business hours within 30 days of the drawing or he/she shall be disqualified and the department will offer the tag to the first alternate. The first alternate must claim the tag within 10 business days of notification or he/she shall be disqualified and the department will notify the second alternate. The second alternate will be contacted in the same manner and with the same deadlines as the first alternate if the winner or first alternate have not claimed the tag as required. The tag will not be issued if not claimed during regular business hours within 90 days following the drawing.

(k) The access and habitat raffle deer/elk tag winners must have a valid hunting license.

(l) The department will issue an access and habitat raffle deer/elk tag to the person whose name appears on the winning ticket and who meets all criteria specified herein. The tag is not transferable.

(5) Access and habitat deer/elk tag auction requirements:

(a) Residents and nonresidents shall be eligible to bid.

(b) The minimum acceptable bid for an access and habitat auction tag shall be \$2,000.00 for deer and \$5,000.00 for elk. The bid price includes the tag fee.

(c) Individuals, agents, corporations, or others that submit the highest bid shall provide the name, address, phone number, and affiliation of the individual to whom the access and habitat auction deer/elk tag shall be

issued to a department representative or a representative of the organization authorized to conduct the auction immediately upon the conclusion of the auction of such tag.

(d) Submittal of the winning bid shall be made to the department by cashiers check or certified check within 20 working days of the date of the auction (whether conducted by the department or by a sportsman's group or organization authorized to do so).

(e) If the full amount of the bid is not paid as required by OAR 635-090-140(5)(d), the department may, at its discretion, reject the bid and offer the access and habitat auction deer/elk tag to the next highest bidder. Such next highest bidder must make payment to the department by cashiers check or certified check within five working days of notification.

(f) The access and habitat auction deer/elk tag winner must have a valid hunting license.

(g) The department will issue an access and habitat auction deer/elk tag to the winner who meets all criteria specified herein. The tag is not transferable.

(h) The department reserves the right to accept or reject any or all access and habitat auction deer/elk tag bids.

Stat. Auth: ORS 496.012, 496.138, 496.146, 496.232 & 496.242

Stats. Implemented: ORS 496.012, 496.138 & 496.146

Hist.: FWC 17-1994, f. & cert. ef. 3-10-94; FWC 87-1994, f. & cert. ef. 11-22-94; FWC 52-1995, f. & cert. ef. 6-16-95; FWC 36-1996, f. & cert. ef. 6-7-96; DFW 48-1998, f. & cert. ef. 6-22-98; DFW 46-1999, f. & cert. ef. 6-15-99; DFW 1-2000(Temp), f. & cert. ef. 1-3-00 thru 6-30-00; DFW 40-2000, f. & cert. ef. 7-25-00; DFW 62-2001, f. & cert. ef. 7-25-01; DFW 106-2003, f. & cert. ef. 10-16-03; DFW 68-2004, f. & cert. ef. 7-13-04

635-090-0150

2005 Deer and Elk Auction Tags

(1) The following tags will be auctioned to the highest bidder in such manner and at such time as determined by the department pursuant to OAR 635-090-0140. Hunters successful in bidding for one of the following tags are subject to the provisions of OAR 635-090-0140 and chapter 635, division 065.

(2) Governor's Statewide Combination Hunt.

(a) Bag Limit: One elk and one deer.

(b) Hunting Hours: As provided in OAR 635-065-0730.

(c) Open Season: September 1, 2005 through November 30, 2005.

(d) Open Area: Any area within Oregon Wildlife Unit Boundaries as defined in OAR chapter 635, division 080 (except federal refuges and specific area closures as defined in OAR chapter 635, division 065).

(e) Weapon: Any weapon legal for elk hunting as provided in OAR Chapter 635, Division 065.

(f) Number of tags: One (1) elk and one (1) deer.

(3) Statewide Deer Hunt.

(a) Bag Limit: One deer.

(b) Hunting Hours: As provided in OAR 635-065-0730.

(c) Open Season: September 1, 2005 through November 30, 2005.

(d) Open Area: Any area within Oregon Wildlife Unit Boundaries as defined in OAR chapter 635, division 080 (except federal refuges and specific area closures as defined in OAR chapter 635, division 065).

(e) Weapon: Any weapon legal for deer hunting as provided in OAR chapter 635, division 065.

(f) Number of Tags: Four.

(4) Statewide Elk Hunt.

(a) Bag Limit: One elk.

(b) Hunting Hours: As provided in OAR 635-065-0730.

(c) Open Season: September 1, 2005 through November 30, 2005.

(d) Open Area: Any area within Oregon Wildlife Unit Boundaries as defined in OAR chapter 635, division 080 (except federal refuges and specific area closures as defined in OAR chapter 635, division 065).

(e) Weapon: Any weapon legal for elk hunting as provided in OAR chapter 635, division 065.

(f) Number of tags: Four.

Stat. Auth: ORS 496.012, 496.138, 496.146, 496.232 & 496.242

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.232 & 496.242

Hist.: FWC 35-1994, f. & cert. ef. 6-16-94; FWC 87-1994, f. & cert. ef. 11-22-94; FWC 36-1996, f. & cert. ef. 6-7-96; DFW 48-1998, f. & cert. ef. 6-22-98; DFW 40-2000, f. & cert. ef. 7-25-00; DFW 60-2002, f. & cert. ef. 6-11-02; DFW 68-2004, f. & cert. ef. 7-13-04

635-090-0160

2005 Deer and Elk Raffle Tags

(1) The following tags will be issued to individuals selected through a public drawing.

(2) Statewide Deer Hunt #AH001.

(a) Bag Limit: One deer.

(b) Hunting Hours: As provided in OAR 635-065-0730.

(c) Open Season: September 1, 2005 through November 30, 2005.

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(d) Open Area: Any area within Oregon Wildlife Unit Boundaries as defined in OAR chapter 635, division 080 (except federal refuges and specific area closures as defined in OAR chapter 635, division 065).

(e) Weapon: Any weapon legal for deer hunting as provided in OAR chapter 635, division 065.

(f) Number of tags: One.

(3) Statewide Combination Elk and Deer #AH002

(a) Bag Limit: One elk and one deer.

(b) Hunting Hours: As provided in OAR 635-065-0730.

(c) Open Season: September 1, 2005 through November 30, 2005.

(d) Open Area: Any area within Oregon Wildlife Unit Boundaries as defined in OAR chapter 635, division 080 (except federal refuges and specific area closures as defined in OAR chapter 635, division 065).

(e) Weapon: Any weapon legal for elk hunting as provided in OAR chapter 635, division 065.

(f) Number of tags: One (1) elk and one (1) deer.

(4) Northeast Oregon Deer Hunt #AH003

(a) Bag Limit: One deer.

(b) Hunting Hours: As provided in OAR 635-065-0730.

(c) Open Season: September 1, 2005 through November 30, 2005.

(d) Open Area: Any area open to controlled buck deer rifle hunts within the following wildlife units as described in OAR chapter 635, division 080 (except federal refuges and specific area closures as defined in OAR chapter 635, division 065): Columbia Basin, Walla Walla, Wenaha, Sled Springs, Chesnimnus, Snake River, Imnaha, Minam, Catherine Creek, Mt. Emily, Ukiah, Heppner, Fossil, Northside, Desolation, Starkey, Sumpter, Lookout Mountain, Keating, and Pine Creek.

(e) Weapon: Any weapon legal for deer hunting as provided in OAR chapter 635, division 065.

(f) Number of tags: One.

(5) Southeast Oregon Deer Hunt #AH004

(a) Bag Limit: One deer.

(b) Hunting Hours: As provided in OAR 635-065-0730.

(c) Open Season: September 1, 2005 through November 30, 2005.

(d) Open Area: Any area open to controlled buck deer rifle hunts within the following wildlife units as described in OAR chapter 635, division 080 (except federal refuges and specific area closures as defined in OAR chapter 635, division 065): Murderers Creek, Beulah, Owyhee, Malheur River, Silvies, Juniper, Steens Mountain, Whitehorse, Beatys Butte, and Warner.

(e) Weapon: Any weapon legal for deer hunting as provided in OAR Chapter 635, Division 065.

(f) Number of tags: One.

(6) Central Oregon Deer Hunt #AH005

(a) Bag Limit: One deer.

(b) Hunting Hours: As provided in OAR 635-065-0730.

(c) Open Season: September 1, 2005 through November 30, 2005.

(d) Open Area: Any area open to controlled buck deer rifle hunts within the following wildlife units as described in OAR chapter 635, division 080 (except federal refuges and specific area closures as defined in OAR chapter 635, division 065): Hood, White River, Biggs, Maupin, Grizzly, Metolius, Ochoco, Maury, Paulina, Upper Deschutes, Fort Rock, Wagonfire, Silver Lake, Sprague, Keno, Klamath Falls, and Interstate.

(e) Weapon: Any weapon legal for deer hunting as provided in OAR chapter 635, division 065.

(f) Number of tags: One.

(7) Northeast Oregon Elk Hunt #AH006

(a) Bag Limit: One elk.

(b) Hunting Hours: As provided in OAR 635-065-0730.

(c) Open Season: September 1, 2005 through November 30, 2005.

(d) Open Area: Any area open to controlled or general season elk rifle hunts within the following wildlife units as described in OAR chapter 635, division 080 (except federal refuges and specific area closures as defined in OAR chapter 635, division 065): Columbia Basin, Walla Walla, Wenaha, Sled Springs, Chesnimnus, Snake River, Imnaha, Minam, Catherine Creek, Mt. Emily, Ukiah, Heppner, Fossil, Northside, Desolation, Starkey, Sumpter, Lookout Mountain, Keating, and Pine Creek.

(e) Weapon: Any weapon legal for elk hunting as provided in OAR chapter 635, division 065.

(f) Number of tags: One.

(8) High Desert Elk Hunt #AH007

(a) Bag Limit: One elk.

(b) Hunting Hours: As provided in OAR 635-065-0730.

(c) Open Season: September 1, 2005 through November 30, 2005.

(d) Open Area: Any area open to controlled or general season elk rifle hunts within the following wildlife units as described in OAR chapter 635, division 080 (except federal refuges and specific area closures as defined in OAR chapter 635, division 065): Murderers Creek, Beulah, Owyhee, Malheur River, Silvies, Juniper, Steens Mountain, Whitehorse, Beatys Butte, Warner, Hood, White River, Biggs, Maupin, Grizzly, Metolius, Ochoco, Maury, Paulina, Upper Deschutes, Fort Rock, Wagonfire, Silver Lake, Sprague, Keno, Klamath Falls, and Interstate.

(e) Weapon: Any weapon legal for elk hunting as provided in OAR chapter 635, division 065.

(f) Number of tags: One.

(9) Western Oregon Elk Hunt #AH008

(a) Bag Limit: One elk.

(b) Hunting Hours: As provided in OAR 635-065-0730.

(c) Open Season: September 1, 2005 through November 30, 2005.

(d) Open Area: Any area within Western Oregon Wildlife Unit Boundaries as defined in OAR chapter 635, division 080 (except federal refuges and specific area closures as defined in OAR chapter 635, division 065).

(e) Weapon: Any weapon legal for elk hunting as provided in OAR chapter 635, division 065.

(f) Number of tags: One.

(10) Statewide Elk Hunt #AH009

(a) Bag Limit: One elk.

(b) Hunting Hours: As provided in OAR 635-065-0730.

(c) Open Season: September 1, 2005 through November 30, 2005.

(d) Open Area: Any area within Oregon Wildlife Unit Boundaries as defined in OAR chapter 635, division 080 (except federal refuges and specific area closures as defined in OAR chapter 635, division 065).

(e) Weapon: Any weapon legal for elk hunting as provided in OAR chapter 635, division 065.

(f) Number of tags: One.

Stat. Auth: ORS 496.012, 496.138, 496.146, 496.232 & 496.242

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.232 & 496.242

Hist.: DFW 48-1998, f. & cert. ef. 6-22-98; DFW 40-2000, f. & cert. ef. 7-25-00; DFW 60-2002, f. & cert. ef. 6-11-02; DFW 68-2004, f. & cert. ef. 7-13-04

Adm. Order No.: DFW 69-2004(Temp)

Filed with Sec. of State: 7-12-2004

Certified to be Effective: 7-12-04 thru 11-23-04

Notice Publication Date:

Rules Amended: 635-017-0090

Rules Suspended: 635-017-0090(T)

Subject: Amend rules regarding sport fishing regulations governing adipose fin-clipped steelhead bag limits on the Clackamas and Sandy Rivers.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-017-0090

Inclusions and Modifications

(1) The **2004 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. The Willamette Zone is described in OAR 635-017-0100. 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) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits for 2004 are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1, 2004 through July 31, 2004 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Saturday through Monday each week. All harvest is prohibited Tuesday through Friday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) No permit holder shall harvest more than one hundred (100) lamprey during the 2004 lamprey season;

(f) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31, 2004 to report catch. Permit holders who do not return

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the harvest record cards by August 31, 2004 will be ineligible to receive a permit in 2005.

(g) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

(3) Effective May 28, 2004 through November 23, 2004, notwithstanding all other specifications and restrictions as outlined in the current **2004 Oregon Sport Fishing Regulations**, anglers may retain one (1) additional adipose fin-clipped steelhead within the normal daily bag limit in those areas open to steelhead angling in the mainstem Willamette River and tributaries above Willamette Falls.

(4) Effective July 12, 2004 through November 23, 2004, notwithstanding all other specifications and restrictions as outlined in the current **2004 Oregon Sport Fishing Regulations**, anglers may retain one (1) additional adipose fin-clipped steelhead within the normal daily bag limit in the mainstem Clackamas River from the mouth upstream to North Fork Dam and in the mainstem Sandy River from the mouth upstream to Marmot Dam.

[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.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-03-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04

Adm. Order No.: DFW 70-2004(Temp)

Filed with Sec. of State: 7-12-2004

Certified to be Effective: 7-12-04 thru 12-31-04

Notice Publication Date:

Rules Amended: 635-006-1085

Subject: Extend deadline for the 2004 Troll Salmon Permit Lottery.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-006-1085

Lottery for Certain Limited Entry Fisheries

(1) A lottery process is provided in all limited entry fisheries except ocean Dungeness crab.

(2) A lottery for issuance of permits shall be conducted as follows:

(a) Gillnet salmon — see ORS 508.792;

(b) Troll salmon — see ORS 508.819;

(c) Shrimp — see ORS 508.904;

(d) Scallop — see ORS 508.861. If the number of permits issued in accordance with ORS 508.849 falls below 25, the Department in the next succeeding calendar year may issue permits by a lottery system. However, the total number of permits issued shall not exceed 25;

(e) Roe-herring — If the number of permits issued in accordance with OAR 635-006-1035 falls below six, the Department in the next succeeding calendar year may issue permits by a lottery system. However, as a result of any such lottery, the total number of permits issued shall not exceed six;

(f) Sea Urchin:

(A) If the total number of permits which have been renewed, and/or for which an appeal is pending, with the Commercial Fishery Permit Board and/or awarded through a prior lottery, is less than 30, a lottery shall be held on the 4th Friday in April;

(B) An individual must be 18 years of age or older and furnish proof of age to be eligible for the lottery;

(C) An individual may not already hold a valid urchin permit, however, an individual whose permit is at issue in a pending Sea Urchin Permit Board proceeding or before a court of law may participate in the lottery;

(D) If a permittee whose permit is at issue either before the Sea Urchin Permit Board or a court of law is awarded another permit through the lottery and thereafter prevails before the Board or in court, the permittee shall immediately surrender one of the permits to any Department office, so that only one valid permit is held;

(E) An individual who qualifies to participate in the lottery shall send a complete lottery application to the Department, date-stamped or post-marked no later than April 15 of the year for which the permit is to be issued. An individual shall not submit more than one application to participate in the lottery. For successful applicants, the application fee shall apply toward the permit fee of \$75;

(F) The names of lottery applicants shall be drawn to obtain the available permits. All other names of lottery applicants shall be drawn and placed on an alternate list in the order in which they were drawn, and shall be issued permits during the next 24 months as they may become available through Permit Board actions or surrender of permits by a permit holder;

(G) An individual whose name is drawn in the lottery shall thereafter apply on the prescribed form, to the Department to obtain a permit. Such application must be received by the Department within 30 days of the date the notification was mailed to the successful applicant following the lottery;

(H) Any individual who fails to apply for the lottery permit within 30 days shall forfeit such permit. The permit shall then be made available to the first name on the alternate list, and shall be applied for in accordance with section (G) of this rule;

(I) If all permits are not issued by renewal or through the lottery, permits thereafter may be issued on a first come first served basis up to the total number of permits allowed. All applications shall be mailed to the Department and priority shall be based on postmark or date-stamped date;

(J) The Commission may suspend the lottery for up to two years based upon its assessment of the condition of the resource and recommendations of the Sea Urchin Permit Review Board.

(g) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.XXX. If the number of permits issued in accordance with ORS 508.XXX falls below 80 for black rockfish and blue rockfish permits or 50 for black rockfish and blue rockfish permits with a nearshore endorsement, the Department in the next succeeding calendar year may issue permits by a lottery system. However, the total number of permits issued shall not exceed 80 for black rockfish and blue rockfish permits or 50 for black rockfish and blue rockfish permits with a nearshore endorsement.

(3) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(4) Application for vessel permits shall only be accepted for vessels, which in the judgment of the Department, are capable of operating the gear necessary to legally participate in the fishery. Vessels of a size or design incapable of harvesting the permitted species are not eligible for the lottery.

(5) Only one application per vessel may be submitted for each permit fishery lottery.

(6) Any application which is not legible, has incomplete information, or is postmarked after the deadline will not be entered in the lottery. Applications for all vessel permits will be accepted at the Headquarters Office of the Department of Fish and Wildlife, and shall be postmarked or date stamped no later than June 30 of the year for which the permit is issued, except the application deadline governing the 2004 Troll Salmon Permit Lottery has been extended to August 31, 2004.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.119

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; DFW 11-2003(Temp), f. & cert. ef. 2-10-03 thru 6-30-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 70-2004(Temp), f. & cert. ef. 7-12-04 thru 12-31-04

Adm. Order No.: DFW 71-2004(Temp)

Filed with Sec. of State: 7-13-2004

ADMINISTRATIVE RULES

Certified to be Effective: 7-14-04 thru 7-31-04

Notice Publication Date:

Rules Amended: 635-041-0095

Rules Suspended: 635-041-0095(T)

Subject: Amend rule to allow a Treaty Indian commercial gill net fishery targeting summer chinook and sockeye within Zone 6, in the Columbia River. Implementation consistent with action taken July 13, 2004, by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-041-0095

Summer Salmon Season

(1) Chinook, steelhead, sockeye, walleye, carp, and shad may be taken for commercial purposes from mainstem Columbia River, Zone 6, beginning 6 a.m., June 30, 2004 through 12 midnight, Saturday, July 31, 2004.

(a) Closed areas set forth in OAR 635-041-0035, except the Spring Creek sanctuary.

(b) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for subsistence use. Also, sturgeon from the Bonneville Pool between 45-60 inches in length may be kept for subsistence use.

(c) Gear is restricted to subsistence fishing gear; hoopnets, dipnets, rod and reel with hook-and-line.

(2) Chinook, steelhead, coho, sockeye, walleye, carp and shad may be taken for commercial purposes from mainstem Columbia River, Zone 6, beginning 6 a.m., Wednesday, June 30, 2004 until 6 p.m., Friday, July 2, 2004.

(a) Closed areas set forth in OAR 635-041-0035, except the Spring Creek sanctuary.

(b) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for subsistence use. Also, sturgeon from the Bonneville Pool between 45-60 inches in length may be kept for subsistence use.

(3) Chinook, steelhead, sockeye, walleye, carp and shad may be taken for commercial purposes from mainstem Columbia River, Zone 6, beginning 6 a.m., Wednesday, July 14, 2004 until 6 p.m., Saturday, July 17, 2004.

(a) Closed areas set forth in OAR 635-041-0035, except the Spring Creek sanctuary.

(b) There are no mesh size restrictions.

(c) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for subsistence use. Also, sturgeon from the Bonneville Pool between 45-60 inches in length may be kept for subsistence use.

(4) Commercial sale of fish taken in the Klickitat and Big White Salmon river tributaries is allowed during the open commercial periods as identified in (1), (2) and (3).

Stat. Auth.: ORS 496.118, 506.119

Stats. Implemented: ORS 506.109, 506.129, 507.030

Hist.: DFW 54-2004(Temp), f. 6-16-04, cert. ef. 6-17-04 thru 7-31-04; DFW 57-2004(Temp), f. 6-22-04, cert. ef. 6-23-04 thru 7-31-04; DFW 62-2004(Temp), f. 6-29-04, cert. ef. 6-30-04 thru 7-31-04; DFW 71-2004(Temp), f. 7-13-04, cert. ef. 7-14-04 thru 7-31-04

Adm. Order No.: DFW 72-2004(Temp)

Filed with Sec. of State: 7-15-2004

Certified to be Effective: 7-16-04 thru 9-30-04

Notice Publication Date:

Rules Amended: 635-003-0076

Rules Suspended: 635-003-0076(T)

Subject: Amend regulation to increase the landing and possession limit for the commercial troll fishery from the US-Canada Border to Cape Falcon.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-003-0076

US-Canada Border to Cape Falcon, May/June All Salmon-Except Coho Season and July-September All Species Season

(1) Vessels must land their fish within the area or in Garibaldi, Oregon, and within 24 hours of any closure of this fishery. Oregon licensed limited fish sellers and fishers intending to transport and deliver their catch outside the area must notify ODFW one hour prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

(2) The commercial troll fishery season, as described above in (1), is open effective Saturday, 12:01 a.m., June 26, 2004, through Wednesday, 11:59 p.m., June 30, 2004. Per vessel, there is a fifty (50) fish landing and possession limit for the entire five-day period.

(3) The commercial troll fishery season, as described above in (1), is open effective Thursday, 12:01 a.m., July 8, 2004, through Monday, 11:59 p.m., July 12, 2004. Per vessel, there is an one-hundred (100) chinook landing and possession limit for the entire five-day period.

(4) The commercial troll fishery season, as described above in (1), is open effective Friday, 12:01 a.m., July 16, 2004, through Monday, 11:59 p.m., July 19, 2004. Per vessel, there is an one-hundred twenty five (125) chinook landing and possession limit for the entire four-day period.

(5) **Humbug Mountain to the Oregon/California Border, June-September All Salmon-Except Coho Season.** Vessels must land their fish in Gold Beach, Port Orford, or Brookings, Oregon, and within 24 hours of any closure. Fishers intending to transport and deliver their catch to other locations after first landing in one of these ports must notify ODFW prior to transport away from the port of landing g by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

(6) The commercial troll fishery season, as described above in (5), is closed effective 12 midnight, Saturday, June 19, 2004.

(7) The commercial troll fishery season, as described above in (5), will re-open effective July 1, 2004.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 506.129

Hist.: FWC 37-1990, f. & cert. ef. 5-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; DFW 34-2001, f. & cert. ef. 5-10-01; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 38-2004(Temp), f. & cert. ef. 5-5-04 thru 6-30-04; DFW 42-2004(Temp), f. 5-14-04, cert. ef. 5-15-04 thru 6-30-04; DFW 45-2004(Temp), f. 5-21-04, cert. ef. 5-24-04 thru 6-30-04; DFW 56-2004(Temp), f. 6-18-04, cert. ef. 6-19-04 thru 9-30-04; DFW 59-2004(Temp), f. 6-28-04, cert. ef. 7-1-04 thru 9-30-04; DFW 66-2004(Temp), f. 7-6-04, cert. ef. 7-8-04; DFW 72-2004, f. 7-15-04, cert. ef. 7-16-04 thru 9-30-04

Department of Human Services, Child Welfare Programs Chapter 413

Adm. Order No.: CWP 12-2004

Filed with Sec. of State: 7-1-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 4-1-04

Rules Amended: 413-100-0400, 413-100-0410, 413-100-0420, 413-100-0430, 413-100-0440, 413-100-0450, 413-100-0460, 413-100-0480, 413-100-0490, 413-100-0500, 413-100-0510, 413-100-0520, 413-100-0530, 413-100-0540, 413-100-0550, 413-100-0560, 413-100-0580, 413-100-0590, 413-100-0600, 413-100-0610

Subject: These Title XIX and GA Medical Eligibility rules are being revised to reflect the changes in Department and/or agency names due to the legislative approval of the integration of all Human Resource agencies. These rules are also being revised to clarify the process of referring relative providers to Self Sufficiency in order to ensure a child placed in the care and custody of Child Welfare (and placed with said relative) receives the necessary Medicaid coverage. These rules also include clarification on the appropriate use of Medicaid coverage for newborn children placed in the care and custody of Child Welfare.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-100-0400

Purpose

The purpose of these rules (OAR 413-100-0400 to 413-100-0610) is to set forth procedures and criteria that the Department of Human Services (the Department) uses to determine eligibility under Title XIX of the Social Security Act (Title XIX) for children in substitute care who are in the care and custody of the Department and to determine eligibility for those children who do not meet the financial eligibility criteria for Title XIX but who are otherwise eligible for the General Assistance medical program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0410

Definitions

As used in OAR 413-100-0400 to 413-100-0610:

(1) "Custody" means legal custody described in ORS 419B.370.

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(2) "Earned income" means income received from earnings of a child who is working full time or part time.

(3) "Paid substitute care" means care paid for by the Department for a child in the Department's custody who is placed out of the home. Examples of an out-of-home placement are a placement with a foster parent or a relative or a placement in a group home, in permanent foster care, in an emergency shelter, in a residential facility, in a non-finalized adoptive placement, in subsidized independent living, in an accredited psychiatric facility, or in the State Hospital.

(4) "Resource" means real and personal property.

(5) "Unearned income" includes such income as social security benefits, veterans benefits, child support payments, and entitlements from other government-operated programs, but the term does not include a foster care payment made by the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0420

Determinations Required

(1) Before a child in substitute care may receive a medical card covering Medicaid services, the Department must determine the child's eligibility for Medicaid. In order for the Department to determine eligibility, the child or someone on the child's behalf must submit to the Department a completed, dated, and signed form CF 190, "Individual Eligibility Determination for Title XIX Medical Coverage."

(2) Only the following children may be eligible for medical services under Title XIX:

(a) A child in substitute care. For the purpose of these rules, a child is in substitute care if the child is in a foster or relative placement or a placement in a group home, in permanent foster care, in an emergency shelter, in a residential facility, in a non-finalized adoptive placement, in subsidized independent living, or in an accredited psychiatric facility. A child placed in the State Hospital is in substitute care whether the Department or another agency is responsible for the placement.

(b) A child admitted to the hospital prior to entering substitute care and a newborn released from the hospital into substitute care. Eligibility for these children is effective on the date the Department finds the child is eligible but not earlier than the date the Department obtains custody of the child. A child hospitalized while under the Department's protective custody but then returned home upon discharge is eligible if at the time of hospitalization the Department's intent was to place the child in substitute care.

(c) A baby born to a mother receiving medical benefits under Title XIX from the Department.

(d) A baby born to a mother not receiving medical benefits under Title XIX from the Department, for coverage of birth expenses only, if:

(A) The Department obtains custody of the baby during its hospitalization;

(B) A "medical coverage only" code ("SMED") is entered in the Department's FACIS system effective the date of birth; and

(C) In the month following the birth month (if the child is not found Title IV-E eligible) a new CF 190 is completed for review of the infant's ongoing Title XIX eligibility.

(e) A child on runaway status who would otherwise be in care. Eligibility resumes at the time the child is located or, if earlier, it resumes the date a medical bill is incurred, as long as the Department retains custody of the child and the child would continue to be in substitute care and Title XIX eligible if not on runaway status. The Department is not responsible for medical bills incurred while a child is on the run if the child is not returned to substitute care.

(f) Youth in subsidized Independent Living.

(g) A child placed in an adoptive home pending the finalization of adoption.

(h) A child receiving SSI. An application (form CF 190) for Title XIX must be completed to establish initial eligibility.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0430

Assistance Standard

(1) To be eligible for medical assistance under Title XIX while in foster care, a child must:

(a) Meet the TANF payment standard for one person in a household of one (*see* OAR 461-155-0030);

(b) Meet the standard for the Medically Needy program for one person in a household of one (*see* OAR 461-155-0110);

(c) Meet the standard for the Medically Needy program with spend-down (*see* OAR 461-160-0080);

(d) Be eligible for and receiving Title IV-E foster care payments; or

(e) Be receiving Supplemental Security Income (SSI).

(2) All unearned income that the child is entitled to receive is counted in determining eligibility. Income must be counted in determining eligibility even if the Department has not begun to receive the benefits as long as that income has been awarded to the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0440

Earned Income

(1) Earned income of the following children is disregarded when determining eligibility:

(a) A child who is a full-time student (as defined by the school) attending grade 12 or below or who attends a course of vocational or technical training or GED classes in lieu of high school, or who plans to return to school or vocational training.

(b) A child who is a part-time student who is not employed full time and is attending grade 12 or below, is attending an equivalent level of vocational or technical training or GED classes, or is planning to return to school or training.

(2) The Department disregards as follows the earnings of a child who is attending school part-time and is employed full-time or who is not attending school. The first \$90 of earned income is disregarded.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0450

Resources

(1) A child with resources valued in excess of \$2,000 is not eligible for medical assistance under Title XIX. If a child has a motor vehicle, the first \$1,500 of equity value of that vehicle is exempt. The equity value over \$1,500 is counted towards the \$2,000 resource limitation.

(2) A child receiving SSI is eligible for medical assistance under Title XIX. If the value of the assets in the trust account maintained by the Department for the child exceeds the limitation for SSI eligibility, the Department is required to report that to the Social Security Administration. The Department's rules for maintaining the trust accounts are at OAR 413-310-0400 to 413-310-0510.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0460

Citizenship and Alienage

(1) To be eligible for medical assistance under Title XIX the child must be:

(a) A United States citizen;

(b) An alien lawfully admitted under provisions of Section 203(a)(7) before April 1980, 207(c), 208, 249, 584(a), 101, Section 207(c) (after March 31, 1980) or Section 212(d)(5) of the Immigration and Nationality Act as a paroled or conditional entrant; or aliens granted immigrant status according to the Amerasian Homecoming Act (*see* OAR 461-120-0120);

(c) An amnesty alien with permanent or unexpired temporary status admitted under Section 245A, 210, or 210A of the Immigration and Nationality Act (*see* OAR 461-120-0125);

(d) A citizen of Puerto Rico, Guam, the Virgin Islands, or Saipan, Tinian, Rota, or Pagan of the Northern Mariana Islands; or

(e) A national from American Samoa or Swains Islands.

(2) In order to authorize benefits, there must be proof that a child is a U.S. citizen or is in the country legally. Birth certificates, citizenship papers, alien registration cards, permanent visas, and Cuban and Refugee registration cards may be used. Guidance on determining citizenship and alien status is available in the Department's Family Services Manual.

(3) To authorize Title XIX benefits, there must be proof that the child is in the country legally. Individuals completing and signing the CF 190 application swear that they have reported the child's citizenship honestly.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

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413-100-0480

Retroactive Eligibility

A child receiving medical assistance through the GA program rather than through a medical program under Title XIX due solely to the lack of an SSN is eligible for Title XIX retroactive to the date of placement once the Department receives verification of an application for an SSN from the Social Security Administration. A form AFS 148 titled "Recipient Subsystem, Claims Processing, Addition/Correction" must be completed on each case and sent to the Client Maintenance Unit, for retroactive claiming of Title XIX. Title XIX eligibility retroactive to the date of placement must also be entered into the Department's FACIS system.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0490

Assignment of Medical Benefits

(1) All known or potential health insurance benefits or resources and all other third-party medical benefits, including casualty insurance available to the child, must be assigned to the Department.

(2) The caseworker or the caseworker's designee, as guardian of the child, may assign the benefits by signing the form SCF190.

(3) A form AFS 415-H, "Medical Resource Report Form," must be completed and sent to the Department for every child with health insurance coverage.

(4) A form CF 969A, "Adoption Assistance Application Supplement," must be completed and sent to the Department's Health Insurance Group for each child approved for Adoption Assistance prior to finalization of the adoption.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0500

Lump Sum Benefits

If a sufficient portion of a lump sum (any income received as a one-time payment) is spent during the month it is received by the Department's Receiving and Trust Unit so that the ending Trust and Agency balance is less than the Medically Needy resource limit of \$2,000, medical eligibility is not affected by receipt of the lump-sum income.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0510

Title XIX Coverage

If a child leaves paid substitute care, Title XIX eligibility continues for the remainder of the calendar month the child was in care as long as the child was eligible the day the medical card was issued.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0520

Reviews

(1) Each child's eligibility for Title XIX must be reviewed every 12 months unless the child is receiving SSI. A review is not required for a child receiving SSI.

(2) When there is a change in income or resources, the Department's form CF 190 must be completed in the month the change occurs in order to update the medical eligibility for the following month.

(3) When it has been determined that a child was incorrectly shown as Title XIX eligible for prior months, the Department completes a form AFS 148 to retroactively correct the child's record.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0530

Quality Control

(1) The Department is responsible to review cases covered by these rules for compliance with federal law and regulations.

(2) All cases to be reviewed are requested through the Department's Financial Resource Unit. All case material (eligibility and service records) are made available for review upon request. The cases are randomly selected for review each month from a universal listing of Title XIX-eligible cases. Title IV-E cases are not included in the cases to be reviewed.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0540

GA Medical Policy

(1) A child in paid substitute care who does not meet the eligibility requirements for Title XIX, is eligible for medical assistance through the General Assistance medical program.

(2) A form CF 190 indicates the child is eligible for GA medical when the child is no longer eligible for Title XIX. These cases are reviewed every 12 months to determine whether the child is again eligible under Title XIX due to a change in income or resources.

(3) Infrequently a non-relative foster care provider is the designated payee for a foster child's benefits. Until payee status is transferred to the agency and a foster care maintenance payment is made, the child is eligible for GA medical as long as its income is less than the standard cost of foster care for the child.

(4) Youth in non-subsidized Independent Living are eligible for GA medical unless their income exceeds the standard cost of foster care for their age level.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0550

Non-Paid Relative Placements

(1) For the Department to determine Medicaid eligibility for a child placed with a non-paid relative, a completed form SREL 190 must be submitted to the Department. A child in this situation is not eligible to receive a GA medical card. The Federal Program Coordinator provides assistance to eligibility specialists working with non-citizen children placed with a non-paid relative.

(2) A child placed in a relative's home in another state is referred to the Title XIX agency in that state for a Title XIX determination. If that state determines there is no Title XIX eligibility, the child may be eligible for a GA medical card only if the child's income is below the foster care rate (*see* OAR 413-090-0000). The Department will not place a child in another state without following the procedures required by the rules on the Interstate Compact on the Placement of Children, OAR 413-040-0200 to 413-040-0330.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0560

Medical Eligibility for Children in Adoptive Homes

(1) A child placed in an adoptive home prior to the entry of a final decree of adoption is eligible for a medical card.

(2) If no foster care payment is made, the child is GA eligible prior to execution of any Adoption Assistance agreements.

(3) If no medical eligibility is initially established, the medical eligibility may be determined using the criteria in section (2) of this rule any time during the adoption supervisory period.

(4) Title XIX eligibility for a child in an adoptive placement for whom Adoption Assistance has been approved is determined according to OAR 413-130-100, "Medical Assistance."

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0580

Title XIX Eligibility Under COBRA for Out-of-State Placements

(1) The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides for Title XIX coverage in the state of residence for children receiving Title IV-E foster care payments.

(2) A child receiving Title IV-E foster care payments from another state who moves to Oregon must be evaluated for eligibility for Medicaid. A child in the custody of another state is not eligible to receive a Medical Care Identification (medical card). A child who is found eligible for benefits under Title IV-E in Oregon and then moves to another state is eligible for Title XIX in the state of residence. The medical card is issued by the state of residence.

(3) A child who receives SSI payments who moves outside of Oregon is eligible for Title XIX in the state of residence.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0590

Youth in Detention

Youth held in a county or state juvenile detention facility are ineligible for Title XIX or GA medical coverage. Payment is made for emergency

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medical services only for a child in the Department's custody. The payment is made from the field office's "Other Medical" budget. The Medical Assistance Resource Coordinator provides assistance in determining whether a payment may be made.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0600

Children in Residential Care with Payment by Another Public Agency

(1) A child in substitute care approved by a public agency of this state for whom a public agency of this state is assuming some financial responsibility may be eligible for medical coverage.

(2) A child in the custody of the Department who is placed in residential care paid by another public agency may be eligible for medical coverage.

(3) Before a medical card can be issued to a child in the Department's custody or in non-paid residential care funded by another public agency, the following must be entered on the Department's FACIS system:

- (a) Medical eligibility after completion of a form SCF190;
- (b) An SRES non-pay service;
- (c) The child's address on IKMB (the child's individual screen).

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

413-100-0610

Temporary Medical Card Issuance

The form OMAP 1086, "Temporary Medical Care Identification Card," may be issued when a child requires medical care prior to receiving the computer-generated medical card (Medical Care Identification Card, OMAP 1417). The temporary card may also be issued when the child is placed or moved to a new placement or when the card is lost and medical care is needed before a new card can be issued. The eligibility data must be entered into the system at the time of issuance in order for the provider to be paid.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04

Adm. Order No.: CWP 13-2004

Filed with Sec. of State: 7-1-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 6-1-04

Rules Amended: 413-050-0510

Subject: The Department is amending the Domestic Violence Fund OAR to bring language into compliance with ORS language on the placement of the Fund. The OAR calls it the Department's account; ORS calls it Services to Children and Families account. We are deleting language labeling the account and only citing the statute. This rule may also be changed for the purposes of correcting errors of grammar or usage, and updating references to the Department's organizational units.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-050-0510

Definitions

(1) "Applicant" means public agency or private non-profit organization that meets the minimum criteria outlined in 413-050-0515 and applies to the Department for funding from the Domestic Violence fund to operate qualified programs as described in 413-050-0570.

(2) "Contractor" means an Applicant/s that has been selected to provide services, to victims of domestic violence and their families through a grant or contract with the Department under these rules.

(3) "Crisis Line" is defined in ORS 108.610(2) and means an emergency telephone service staffed by persons who are trained to provide emergency peer counseling, information, referral and advocacy to victims of domestic violence and their families.

(4) "Cultural Competency" means a set of congruent behaviors, attitudes, and policies that come together in a system, organization or among professionals and enable that system or those professions to work effectively in cross cultural situations. It refers to a program's ability, at the levels of policy, administration and practice, to honor and respect those beliefs, interpersonal styles, attitudes and behaviors of culturally diverse clients and the diverse staff who are providing services.

(5) "CAF": means Children, Adults and Families, a policy and program area of the Department of Human Services (DHS).

(6) "Department": means Department of Human Services.

(7) "Domestic and Sexual Violence Fund Advisory Committee (DSV-FAC)": means the Domestic and Sexual Violence Fund Advisory Committee established in OAR 413-050-0530.

(8) "Domestic Violence Fund" means the fund established by ORS 108.660.

(9) "Domestic Violence" means Family Violence, defined by ORS 108.610 to mean the physical injury, sexual abuse or forced imprisonment, or threat thereof, of a person by another person who is related by blood, marriage or intimate cohabitation at the present or has been related at some time in the past, to the extent that the person's health or welfare is harmed or threatened thereby. Domestic violence includes a pattern of assaultive and/or coercive behaviors including physical, sexual, psychological and emotional abuses, as well as economic coercion that adults use against their intimate partners to gain power and control in that relationship.

(10) "Family Violence Prevention Program" means the program within the Department funded by the Domestic Violence Fund and other related funds as available to provide shelter and related services to victims of domestic violence.

(11) "Grantee(s)" means an Applicant/s that has been selected to provide services, to victims of domestic violence and their families through a grant or contract with the Department under these rules.

(12) "Safe house" means a place of temporary refuge, offered on an as needed basis to survivors of domestic violence and their families.

(13) "Shelter home or shelter facility" means a place of temporary refuge, offered on a 24-hour, seven-day per week basis to survivors of domestic violence and their children.

(14) "Underserved Populations" are communities or groups of people who face additional barriers to accessing services due to race, ethnicity, color, disability, primary language other than English, National origin, immigration status, geographic location, gender, age, sexual orientation, or poverty.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 108.610 - 108.660
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03; CWP 13-2004, f. & cert. ef. 7-1-04

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

Adm. Order No.: OMAP 41-2004

Filed with Sec. of State: 6-24-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 6-1-04

Rules Amended: 410-121-0021

Subject: The Pharmaceutical Services program administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for pharmaceutical products and services provided to clients. Rule 410-121-0021 is amended, effective July 1, 2004, to operationalize 2003 legislation expanding the providers and organizations licensed to dispense pharmaceutical products.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0021

Organizations Authorized to Provide Pharmaceutical Prescription Services

(1) Pharmacies, rural health clinics, and other medical organizations may provide drug prescription services for fee-for-service OMAP clients and receive reimbursement from OMAP by complying with all the following requirements:

(a) Comply with all applicable Federal and State statutes, regulations and rules;

(b) Meet all current licensing and regulatory requirements;

(c) Be enrolled as a pharmacy provider with OMAP;

(d) Have a current National Association of the Board of Pharmacy (NABP) number to bill OMAP; and

(e) Comply with OMAP pharmacy billing requirements.

(2) Refer to OAR 410-120-1260 for enrollment details.

(3) Nurse Practitioners licensed to dispense medications (OAR 851-050-0000) and Medical Doctors certified to dispense medications authorized by state law and their respective state licensing board to dispense med-

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ications (OAR 847-015-0025) may provide drug prescription services for fee-for-service OMAP clients. These providers may receive reimbursement from OMAP by complying with all the following requirements:

(a) Comply with all applicable Federal and State statutes, regulations and rules;

(b) Meet all current licensing and regulatory requirements;

(c) Be enrolled as a provider with OMAP, including the dispensing certification or licensure; and

(d) Comply with OMAP pharmacy billing requirements.

(4) Licensed practitioners as noted in subsections (1) and (3) above, who practice in rural health clinics may provide drug prescription services for fee-for-service OMAP clients for an urgent medical condition as defined in ORS 414.325(6).

Statutory Authority: ORS 409

Statutes Implemented: ORS 414.065

Hist.: OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 41-2004, f. 6-24-04 cert. ef. 7-1-04

Adm. Order No.: OMAP 42-2004

Filed with Sec. of State: 6-24-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 6-1-04

Rules Amended: 410-121-0157

Rules Repealed: 410-121-0157(T)

Subject: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. OMAP, having temporarily amended Rule 410-121-0157, effective May 14, 2004, to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations, permanently amends the rule, effective July 1, 2004. Updates include information from CMS Releases #129, dated February 19, 2004, and #130, dated April 30, 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 #129, dated February 19, 2004 and #130, dated April 30, 2004 and the OMAP Master Pharmaceutical Manufacturer's Rebate Lists, alphabetical and numeric, by manufacturer. This information is available on the Department of Human Services' website: <http://www.dhs.state.or.us/policy/healthplan/rules/>, and on the CMS website: www.cms.hhs.gov/medicaid/drugs/drughmpg.asp, or by contacting CMS.

(3) OMAP contracts with First Health Services to manage the Medicaid Rebate Dispute Resolution program. Pharmacy providers must verify the accuracy of their Medicaid pharmacy claims with First Health Services within 30 days of request in instances where drug manufacturers dispute their claim information. Verification can be photocopies of drug invoices showing that the billed products were in stock during the time of the date of service.

(4) The actual 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; OMAP 31-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 42-2004, f. 6-24-04 cert. ef. 7-1-04

Adm. Order No.: OMAP 43-2004

Filed with Sec. of State: 6-24-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 6-1-04

Rules Amended: 410-121-0300

Rules Repealed: 410-121-0300(T)

Subject: The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to clients. OMAP, having temporarily amended Rule 410-121-0300, effective June 14, 2004, is permanently amending this rule to update the CMS Federal Upper Limits for Drug Payments listing. This filing is to update Transmittal #37, with Title XIX State Agency Letter Number 04-01, changes to the list are effective for services rendered on or after March 20, 2004, to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS).

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0300

CMS Federal Upper Limits for Drug Payments

(1) The CMS Federal Upper Limits for Drug Payments listing of multiple source drugs meets the criteria set forth in 42 CFR 447.332 and 1927(e) of the Act as amended by OBRA 1993. The development of the current Federal Upper Limit (FUL) listing has been accomplished by computer. Payments for multiple source drugs must not exceed, in the aggregate, payment levels determined by applying to each drug entity a reasonable dispensing fee (established by the State and specified in the State Plan), plus an amount based on the limit per unit which CMS has determined to be equal to a 150 percent applied to the lowest price listed (in package sizes of 100 units, unless otherwise noted) in any of the published compendia of cost information of drugs. The FUL drug listing is published in the State Medicaid Manual, Part 6, Payment for Services, Addendum A. The most current Transmittals and subsequent changes are posted to the CMS website at <http://www.cms.hhs.gov/medicaid/drugs/drug10.asp>. The FUL price listing will be updated approximately every six months.

(2) The most current CMS Federal Upper Limits for Drug Payments Listing, includes changes to Transmittal #37, Title XIX State Agency Letter Number 04-01, with changes to be effective March 20, 2004 and is available for downloading on OMAP's Website, (<http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/>). To request a hard copy, call OMAP.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90; Renumbered from 461-16-330; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 45-1990, f. & cert. ef. 12-28-90; HR 10-1991, f. & cert. ef. 2-19-91; HR 37-1991, f. & cert. ef. 9-16-91; HR 13-1992, f. & cert. ef. 6-1-92; HR 28-1992, f. & cert. ef. 9-1-92; HR 35-1992(Temp), f. & cert. ef. 12-1-92; HR 1-1993(Temp), f. & cert. ef. 1-25-93; HR 3-1993, f. & cert. ef. 2-22-93; HR 5-1993(Temp), f. 3-10-93, cert. ef. 3-22-93; HR 8-1993(Temp), f. & cert. ef. 4-1-93; HR 11-1993, f. 4-22-93, cert. ef. 4-26-93; HR 15-1993(Temp), f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 25-1993(Temp), f. & cert. ef. 10-1-93; HR 14-1994, f. & cert. ef. 3-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 43-1998(Temp), f. & cert. ef. 11-20-98 thru 5-1-99; OMAP 5-1999, f. & cert. ef. 2-26-99; OMAP 42-2000(Temp), f. & cert. ef. 12-15-00 thru 5-1-01; OMAP 1-2001(Temp), f. & cert. ef. 2-1-01 thru 6-1-01; OMAP 2-2001(Temp), f. 2-14-01, cert. ef. 2-15-01 thru 7-1-01; OMAP 18-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 23-

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2001(Temp), f. & cert. ef. 4-16-01 thru 8-1-01; OMAP 26-2001(Temp), f. & cert. ef. 6-6-01 thru 1-2-02; OMAP 51-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-15-01; OMAP 58-2001, f. 11-30-01, cert. ef. 12-1-01; OMAP 67-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 3-2002(Temp), f. & cert. ef. 2-15-02 thru 6-15-02; OMAP 5-2002(Temp), f. & cert. ef. 3-5-02 thru 6-15-02; OMAP 19-2002(Temp), f. & cert. ef. 4-22-02 thru 9-15-02; OMAP 29-2002(Temp), f. 7-15-02, cert. ef. 8-1-02 thru 1-1-03; OMAP 71-2002(Temp), f. & cert. ef. 12-1-02 thru 5-15-03; OMAP 10-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 11-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 8-15-03; OMAP 41-2003, f. & cert. ef. 5-29-03; OMAP 51-2003, f. & cert. ef. 8-5-03; OMAP 54-2003(Temp), f. & cert. ef. 8-15-03 thru 1-15-03; OMAP 75-2003, f. & cert. ef. 10-1-03; OMAP 83-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 4-15-04; OMAP 2-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 32-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 43-2004, f. 6-24-04 cert. ef. 7-1-04

Adm. Order No.: OMAP 44-2004

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Rules Adopted: 410-122-0010, 410-122-0182, 410-122-0184, 410-122-0186

Rules Amended: 410-122-0000, 410-122-0020, 410-122-0040, 410-122-0080, 410-122-0180, 410-122-0190, 410-122-0200, 410-122-0202, 410-122-0203, 410-122-0204, 410-122-0205, 410-122-0206, 410-122-0207, 410-122-0208, 410-122-0209, 410-122-0210, 410-122-0220, 410-122-0240, 410-122-0250, 410-122-0255, 410-122-0260, 410-122-0280, 410-122-0300, 410-122-0320, 410-122-0325, 410-122-0330, 410-122-0340, 410-122-0360, 410-122-0365, 410-122-0375, 410-122-0380, 410-122-0400, 410-122-0420, 410-122-0470, 410-122-0475, 410-122-0480, 410-122-0500, 410-122-0510, 410-122-0520, 410-122-0525, 410-122-0530, 410-122-0540, 410-122-0560, 410-122-0580, 410-122-0590, 410-122-0600, 410-122-0620, 410-122-0625, 410-122-0630, 410-122-0640, 410-122-0660, 410-122-0678, 410-122-0680, 410-122-0700, 410-122-0720

Rules Repealed: 410-122-0030, 410-122-0060

Subject: The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) program administrative rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. The DMEPOS program rules are revised in an effort to make the program more "user friendly" and understandable. OMAP adopted, repealed, reorganized and rewrote rules; and, moved procedure codes to tables and reformatted existing tables. Also, various rules throughout the program were revised to reflect the following: The legislatively adopted budget for 2003/05 includes savings of approximately \$5 million Total Funds for miscellaneous medical services. OMAP has been working with provider representatives to identify and implement reasonable budget reduction targets. One recommended action being implemented by OMAP is the reduction of payments for some codes from a maximum of 16 months of rental to a maximum of 13 months of rental.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-122-0000

Purpose

The Office of Medical Assistance Programs' (OMAP) Administrative Rules for the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) program are to be used in conjunction with the Oregon Health Plan Administrative Rules and the General Rules for OMAP. DMEPOS coverage for eligible clients is based on these rules which govern the provision and reimbursement for DMEPOS.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 3-1982, f. 1-20-82, ef. 2-1-82; AFS 41-1982, f. 4-29-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 in the North Salem, Woodburn, Dallas, McMinnville, Lebanon, Albany and Corvallis branch offices, ef. 6-30-82 in the balance of the state; 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 461-024-0000; HR 9-1993, f. & cert. ef. 4-1-93; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; 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 44-2004, f. & cert. ef. 7-1-04

410-122-0010

Definitions

(1) Buy up — "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.

(2) Consecutive Months — Any period of continuous use where no more than a 60-day break occurs.

(3) Lifetime need — 99 months or more.

(4) Manufacturer Part Number (MPN):

(a) Each manufacturer provides an MPN to identify that manufacturer's part. It is a specification used by the manufacturer to store a part in an illustrated part catalog (graphics and text);

(b) An 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.

(5) OMAP's Maximum Allowable Rate — The maximum amount paid by OMAP for a service.

(6) Practitioner — A person licensed pursuant to Federal and State law to engage in the provision of health care services within the scope of the practitioner's license and certification.

(7) Prescription:

(a) A proper written order supported by documentation in the prescribing practitioner's records.

(b) A prescription must:

(A) Be signed;

(B) Be dated;

(C) Be legible;

(D) Specify the exact medical item or service required;

(E) List the ICD-9-CM diagnosis codes;

(F) List the number of units, and;

(G) List the length of time needed.

(c) An original, fax, or electronic prescription is acceptable.

(8) Purchase price — Includes:

(a) Delivery;

(b) Assembly;

(c) Adjustments, if needed, and;

(d) Training in the use of the equipment or supply.

(9) Rental fees — Include:

(a) Delivery;

(b) Training in the use of the equipment;

(c) Pick-up;

(d) Routine service, maintenance and repair, and;

(e) Moving equipment to new residence, if coverage is to continue.

(10) Technician — A DMEPOS 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.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0020

Prescription Requirement

(1) The durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) provider must:

(a) Obtain a prescription before providing DMEPOS, and;

(b) Retain a copy of the prescription in his or her records.

(2) A prescription is required to:

(a) Purchase;

(b) Rent, or;

(c) Modify an original DMEPOS.

(3) Prescriptions are not required for:

(a) Repairs;

(b) Parts needed for repairs, or;

(c) Replacement parts (e.g., batteries).

(4) Only the initial lifetime prescription is required, unless otherwise indicated by the prescribing practitioner, for the following items:

(a) Ventilators;

(b) Suction pumps and related supplies;

(c) Intermittent positive pressure breathing (IPPB) devices;

(d) Continuous positive airway pressure (CPAP) devices and related supplies;

(e) Respiratory assist devices (RAD) and related supplies;

(f) Medicare 15-month capped rentals (follow Medicare guidelines related to prescription requirements and certificates of medical necessity).

(5) A new prescription is required:

(a) Once a year, for:

(A) Incontinent supplies;

(B) Ostomy supplies;

(C) Urological supplies; and

(D) Some diabetic supplies, per Medicare guidelines.

(b) When there is a change in the order for the item;

(c) When an item is replaced;

(d) When there is a change of DMEPOS provider.

ADMINISTRATIVE RULES

(6) DMEPOS providers may change a prescription by documenting the change on the prescription with the:

- (a) Date;
- (b) Time;
- (c) Initials; and
- (d) The name of the person who provided the change (e.g., prescribing practitioner).

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 41-1982, f. 4-29-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 in the North Salem, Woodburn, McMinnville, Lebanon, Albany and Corvallis branch offices, ef. 6-30-82 in the balance of the state; AFS 20-1983, f. 5-5-83, ef. 6-1-83; AFS 49-1987, f. 10-16-87, ef. 11-1-87; AFS 48-1989, f. & cert. ef. 8-24-89; HR 13-1991, f. & cert. ef. 3-1-91; Renumbered from 461-024-0004; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 72-2002(Temp), f. & cert. ef. 12-24-02 thru 5-15-03; OMAP 36-2003, f. & cert. ef. 5-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0040

Prior Authorization Requirements

(1) Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) providers must obtain prior authorization (PA) for DMEPOS that indicate PA is required.

(2) PA must be requested as follows (see the DMEPOS Supplemental Information for contact information):

(a) For Medically Fragile Children's Unit (MFCU) clients, PA must be requested from the Department of Human Services (DHS) MFCU;

(b) For clients enrolled in the fee-for-service (FFS) Medical Case Management (MCM) program, PA must be requested from the MCM contractor;

(c) For clients enrolled in an OMAP Medical Plan, PA must be requested from the OMAP Medical Plan;

(d) For all other clients, PA must be requested from the Office of Medical Assistance Programs (OMAP).

(3) For clients with Medicare coverage, PA is only required for DMEPOS not covered by Medicare.

(4) PA requests must be submitted within five working days from the initiation of service for DMEPOS provided after normal working hours.

(5) See OAR 410-120-1320 for more information about PA.

[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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0080

Coverage and Exclusions

(1) Equipment which is primarily and customarily used for a non-medical purpose will not be approved for payment, even if the item has some medically related use.

(2) The Office of Medical Assistance Programs (OMAP) does not cover equipment and services not medically appropriate (see OAR 410-120-1200).

(3) Reimbursement:

(a) OMAP reimburses for the lowest level of service, which meets medical appropriateness. See OAR 410-120-1280 (Billing) and 410-120-1340 (Payment) for clients with Medicare, third party resource (TPR) or alternate resource, coverage.

(b) Reimbursement is based on either OMAP's maximum allowable rate or billed rate, whichever is the lesser.

(4) Criteria as listed with individual codes is considered the medical appropriateness for that item. Unless stated otherwise, the number of units per month is limited by medical appropriateness. If no criteria is listed or there are questions about the criteria, medical appropriateness is determined by OMAP.

(5) Equipment and supplies are not covered under some benefit benefit packages (see OAR 410-120-1210).

(6) Buy-ups are prohibited. Advanced Beneficiary Notices (ABN) constitute a buy-up and are prohibited. Refer to the OMAP General Rules for specific language on buy-ups.

(7) Inpatient hospital reimbursement — 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.

(8) Equipment that has been paid for by OMAP becomes the property of the client.

(9) Rental charges, starting with the initial date of service, regardless of payor, apply to the purchase price.

(10) Any needed repairs or maintenance for client-owned equipment is the responsibility of OMAP (based on client eligibility). If the item is in the Medicare Capped Rental Program for a client with Medicare and Medicaid coverage, then continue to bill Medicare for maintenance, per Medicare's schedule.

(11) Repair of equipment includes pick-up and delivery. Travel time cannot be billed to OMAP or the client.

(12) Before renting, purchase should be considered for long-term requirements.

(13) Equipment not covered for purchase, rent or repair by OMAP, includes, but is not limited to the following (or similar/related equipment):

Table 122-0080. [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; OMAP 44-2004, f. & cert. ef. 7-1-04

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 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:

(a) Medicare Statistical Analysis DMERC (SADMERC) Palmetto Government Benefits Administrators; or

(b) AOPA.

(3) Written verification of coding from SADMERC or AOPA will be accepted as true and correct, at OMAP's discretion.

[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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0182

Legend

This is an explanation of the codes used throughout the DMEPOS program rules.

(1) PA — Prior authorization (PA): "PA" indicates that PA is required, even if the client has private insurance. See OAR 410-122-0040 for more information about PA requirements.

(2) PC — Purchase: "PC" indicates that purchase of this item is covered for payment by OMAP.

(3) RT — Rent: "RT" indicates that the rental of this item is covered for payment by OMAP.

(4) MR — Months Rented:

(a) "13" — Indicates that the equipment is considered paid for and owned by the client, after 13 consecutive months of rent by the same provider or when purchase price is reached (whichever is the lesser);

(b) "16" — Indicates that the equipment is considered paid for and owned by the client, after 16 consecutive months of rent by the same provider or when purchase price is reached (whichever is the lesser).

ADMINISTRATIVE RULES

(5) RP — Repair: “RP” indicates that repair of this item is covered for payment by OMAP.

(6) NF — Nursing Facility: “NF” indicates that this procedure code is covered for payment by OMAP when the client is a resident of a nursing facility.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0184

Repairs

(1) 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.

(2) 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.

(3) 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).

(4) If equipment is sent to the manufacturer for repair or non-routine service, the manufacturer must itemize the invoice as to:

(a) Parts;

(b) Labor time — documentation of start and stop time is not required, and;

(c) Shipping and handling — shipping and handling will not be reimbursed.

(5) Procedure Codes:

(a) E1340 — Repair or non-routine service requiring the skill of a technician, labor component, per 15 minutes:

(A) OMAP will repair;

(B) Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned equipment.

(b) K0462 — Temporary replacement for client-owned equipment being repaired, any type:

(A) PA required;

(B) OMAP will rent;

(C) Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned equipment;

(D) Use the price of the HCPCS code that corresponds to equipment being repaired;

(E) 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;

(F) Include the following information about the temporary replacement:

(i) Manufacturer;

(ii) Brand name;

(iii) Model name; and

(iv) Model number.

(G) Limited to one month;

(6) Prescription not required.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0186

Reimbursement and Prior Authorization Requirements for Codes E1399 and K0108

(1) Reimbursement for codes E1399 and K0108 is capped as follows:

(a) E1399 — \$2,500;

(b) K0108 — \$1,000.

(2) The amount of OMAP's reimbursement for codes E1399 and K0108 is determined as follows:

(a) 80% of the Manufacturer's Suggested Retail Price (MSRP);

(b) If an MSRP is not available, reimbursement will be one of the following (whichever is the lowest amount) plus 20%:

(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) If (2)(a) or (b) are not available, reimbursement will be the “estimated price” plus 20%. An “estimated price” is the price the provider expects the manufacturer to charge.

(3) When requesting prior authorization (PA) for items billed at or above \$100, the durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) provider:

(a) Must submit a copy of:

(A) The items from (2) (a)-(c) that will be used to bill;

(B) A copy of the manufacturer's part number, and;

(C) Item description.

(b) May be required to submit the item's picture.

(4) The DMEPOS provider must submit verification for items billed under code E1399 when no specific HCPCS code is available and an item category is not specified in OAR 410 division 122 rules. Verification can come from an organization such as:

(a) Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC); or

(b) American Orthotic and Prosthetic Association (AOPA).

(5) OMAP can review items that are more than the maximum allowable/cap (\$2,500 — E1399, \$1,000 — K0108) on a case-by-case basis. In order for OMAP to review an item the provider must submit the following documentation:

(a) The reason that a less expensive alternative is not medically appropriate, and;

(b) The expected hours of usage per day; and

(c) The expected outcome or change in client's condition.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0190

Equipment and Services Not Otherwise Classified

(1) Documentation must support that the procedure code billed is accurate and is appropriate.

(2) The level of reimbursement should not be considered as a factor in the use of these procedure codes.

(3) Procedure Codes — Table 122-0190.

(4) Criteria for code E1399:

(a) Use modifier TW when using code E1399 for back-up equipment;

(b) Code E1399 includes but is not limited to use for the following:

(A) Walker gliders — Not covered for clients in a nursing facility;

(B) Oxymiser cannula — Not covered for clients in a nursing facility;

(C) Hydraulic bathtub lift — Not covered for clients in a nursing facility;

(D) Heavy-duty or extra-wide rehab shower/commode chair — Not covered for clients in a nursing facility;

(E) 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.

(c) Code E1399 cannot be used for:

(A) Wheelchair base;

(B) Repairs.

(d) Code E1399 can only be used for gait belts when the:

(A) Client is 60 pounds or greater; and

(B) Care provider is trained in the proper use; and

(C) Client meets one of the following criteria:

(i) The client may be able to walk independently, but needs a minor correction of ambulation, or;

(ii) The client needs minimal or standby assistance to walk alone, or;

(iii) The client requires assistance with transfer.

(e) Documentation of medical appropriateness from the prescribing practitioner must:

(A) Be kept on file by the DME provider, and;

(B) Include documentation that the care provider is trained in proper use.

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; OMAP 44-2004, f. & cert. ef. 7-1-04

ADMINISTRATIVE RULES

410-122-0200

Pulse Oximeter

- (1) Indications and Coverage:
 - (a) A pulse oximeter may be covered if:
 - (A) The client has evidence of more than three desaturations below 88% per month, and;
 - (B) At least one of the following conditions exist:
 - (i) The client exhibits signs or symptoms of acute respiratory dysfunction;
 - (ii) The client has chronic lung disease, chest trauma, severe cardiopulmonary disease, or neuromuscular disease involving the muscles of respiration;
 - (iii) 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;
 - (iv) The client has a chronic condition resulting in hypoxemia and there is a need to assess supplemental oxygen requirements and/or a therapeutic regimen.
 - (b) 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;
 - (c) Routine use of pulse oximetry monitoring is not covered (example: a patient with chronic, stable cardiopulmonary problems).
 - (2) Documentation:
 - (a) Submit the following documentation for review:
 - (A) A practitioner order that clearly specifies the medical appropriateness for pulse oximetry testing;
 - (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.
 - (b) An appropriate history and physical exam and progress notes must be available for review, upon request;
 - (c) For an initial request, approval may be given for no longer than the first three months of rental;
 - (d) 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:
 - (A) PA required;
 - (B) The Office of Medical Assistance Programs (OMAP) will purchase.
 - (b) E0445 — Oximeter device for measuring blood oxygen levels non-invasively, per month:
 - (A) PA required;
 - (B) OMAP will rent;
 - (C) OMAP will repair;
 - (D) Item considered purchased after 16 months of rent;
 - (E) Quantity (units) is one on a given date of service;
 - (F) 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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0202

Continuous Positive Airway Pressure (CPAP) System

- (1) Definitions:
 - (a) 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:

(A) “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.”;

(B) “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.”

(b) Apnea-Hypopnea Index (AHI) — 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.

(2) Indications and Coverage:

(a) Use of a continuous positive airway pressure (CPAP) system is covered for:

(A) Sleep Disordered Breathing — Obstructive apnea, central apnea, mixed apnea, and sleep hypopnea syndrome when the polysomnogram indicates:

(i) An Apnea Hypopnea Index (AHI) > 10 per hour of sleep, and;

(ii) Oxygen saturation related to an apneic or hypopneic event which is less than 90%.

(B) Upper airway resistance syndrome (UARS) when the following criteria are met:

(i) An arousal index > 15; and

(ii) 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.

(b) A two-month rental period is required for CPAP prior to purchase;

(c) Clients currently using CPAP can continue to use without having to meet the above criteria.

(3) Documentation:

(a) The following information must be submitted with the initial prior authorization (PA) request 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) Proof of efficacy and compliance from the prescribing practitioner must be submitted with the request for PA for purchase after the two-month rental period is completed.

(4) Procedure Codes — Table 122-0202: [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 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 44-2004, f. & cert. ef. 7-1-04

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:

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(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;

(E) Alternative treatment measures have been tried or considered and deemed clinically ineffective.

(b) Oxygen therapy is not covered 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 PO₂ 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) Group I — Initial coverage for clients meeting Group I criteria is limited to 12 months or the length of need specified by the prescribing practitioner, whichever is shorter. Coverage criteria includes any of the following:

(a) An arterial PO₂ at or below 55 mm Hg or an arterial oxygen saturation at or below 88% taken at rest (awake); or

(b) An arterial PO₂ at or below 55 mm Hg, or an arterial oxygen saturation at or below 88%, taken during sleep for a client who demonstrates an arterial PO₂ at or above 56 mm Hg or an arterial oxygen saturation at or above 89% while awake, or;

(c) A decrease in arterial PO₂ more than 10 mm Hg, or a decrease in arterial oxygen saturation more than 5% 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;

(d) An arterial PO₂ at or below 55 mm Hg or an arterial oxygen saturation at or below 88%, taken during exercise for a client who demonstrates an arterial PO₂ at or above 56 mm Hg or an arterial oxygen saturation at or above 89% 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.

(4) Group II — Initial coverage for clients meeting Group II criteria is limited to three months or the length of need specified by the prescribing practitioner, whichever is shorter. Coverage criteria include the presence of:

(a) An arterial PO₂ of 56-59 mm Hg or an arterial blood oxygen saturation of 89% at rest (awake), during sleep, or during exercise (as described under Group I criteria); and

(b) Any of the following:

(A) Dependent edema suggesting congestive heart failure, or;

(B) 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

(C) Erythrocythemia with a hematocrit greater than 56%.

(5) Group III — Home use of oxygen is presumed not medically appropriate for clients with arterial PO₂ levels at or above 60 mm Hg, or arterial blood oxygen saturation at or above 90%.

(6) Blood Gas Study:

(a) The qualifying blood gas study:

(A) 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;

(B) 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;

(C) 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;

(b) 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;

(c) For clients initially meeting Group I criteria:

(A) The most recent blood gas study prior to the thirteenth month of therapy must be reported on the Recertification CMN;

(B) 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.

(d) For clients initially meeting Group II criteria:

(A) 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. 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;

(B) 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.

(e) For any Revised CMN, the blood gas study reported on the CMN must be the most recent test performed prior to the Revised date;

(f) 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 PO₂ on the CMN. If the ABG PO₂ result is not a qualifying value, home oxygen therapy is not covered regardless of the oximetry test result;

(g) Oxygen Saturation (Oximetry) Tests — Must not be performed by the DME supplier or anyone financially associated with or related to the DME supplier.

(7) Portable Oxygen Systems:

(a) 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;

(b) If the only qualifying blood gas study was performed during sleep, portable oxygen is not covered;

(c) If coverage criteria are met, a portable oxygen system is usually separately payable in addition to the stationary system.

(8) Standby Oxygen: Oxygen PRN or oxygen as needed is not covered.

(9) Topical Oxygen: Oxygen for topical use is not covered.

(10) 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

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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).

(11) Oxygen users before March 1, 1991, will continue to receive services and are not subject to the above criteria.

(12) 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.

(13) Procedure Codes — 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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0204

Nebulizer

Table 122-0204. [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 44-2004, f. & cert. ef. 7-1-04

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) Coverage criteria for E0470 and E0471 devices — **Table 122-0205-1.**

(4) Documentation:

(a) To be submitted with request for prior authorization (PA) and the original kept on file by the supplier:

(A) 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;

(B) Summary of events from the polysomnogram, if required under indications and coverage;

(C) Arterial blood gas results, if required under indications and coverage;

(D) Sleep oximetry results, if required under indications and coverage;

(E) 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;

(F) 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;

(5) Procedure Codes — **Table 122-0205-2.** [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 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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0206

Intermittent Positive Pressure Breathing (IPPB)

E0500, IPPB machine, all types, with built-in nebulization; manual or automatic valves; internal or external power source the Office of Medical Assistance Programs (OMAP) will rent. Covered if medically appropriate for the following indications:

(1) Clients at risk of respiratory failure because of decreased respiratory function secondary to kyphoscoliosis or neuromuscular disorders.

(2) Clients with severe bronchospasm or exacerbated chronic obstructive pulmonary disease (COPD) who fail to respond to standard therapy.

(3) The management of atelectasis that has not improved with simple therapy.

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 44-2004, f. & cert. ef. 7-1-04

410-122-0207

Respiratory Supplies

Table 122-0207. [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 44-2004, f. & cert. ef. 7-1-04

410-122-0208

Suction Pumps

(1) Coverage Criteria:

(a) Use of a home model suction machine is covered for a client who has difficulty raising and clearing secretions secondary to:

(A) Cancer or surgery of the throat; or

(B) Dysfunction of the swallowing muscles; or

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- (C) Unconsciousness or obtunded state; or
- (D) Tracheostomy; or
- (E) Neuromuscular conditions.

(b) Suction catheters are disposable supplies and are covered with a medically appropriate rented, purchased or owned suction pump. Sterile catheters are only covered for tracheostomy suctioning. Oropharyngeal and upper tracheal areas are not sterile and catheters can be reused if properly cleansed and/or disinfected;

(c) The suction device must be appropriate for home use without technical or professional supervision. Those using the suction apparatus must be sufficiently trained to adequately, appropriately and safely use the device;

(d) When a suction pump is used for tracheal suctioning, other supplies (e.g., cups, basins, gloves, solutions, etc.) are included in the tracheal care kit code, A4625 — see OAR 410-122-0209 for details. When a suction pump is used for oropharyngeal suctioning, these other supplies are not medically appropriate;

(e) Suction device will be purchased for individual use by a person in a nursing facility when the person is permanently on one of the following:

- (A) Volume ventilator;
- (B) Chest shell;
- (C) Chest wrap;
- (D) Negative pressure ventilator.

(f) Use E1399 for suction pump used with a nasogastric tube.

(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.

(3) Table 122-0208. [Table not included. See ED. NOTE.]

[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.: 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 76-2003, f. & cert. ef. 10-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04

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 — Table 122-0209. [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; OMAP 44-2004, f. & cert. ef. 7-1-04

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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0220

Pacemaker Monitor

(1) E0610 — Pacemaker monitor, self-contained, checks battery depletion, includes audible and visible check systems:

(a) The Office of Medical Assistance Programs (OMAP) will purchase;

(b) Also covered for payment by OMAP when client is a resident of a nursing facility.

(2) E0615 — Pacemaker monitor, self-contained, checks battery depletion and other pacemaker components, includes digital/visible check systems:

(a) OMAP will purchase;

(b) Also covered for payment by OMAP when client is a resident of a nursing facility.

Stat. Auth.: ORS 184.750, 184.770, 409.010 & 409.110

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 9-1993 f. & cert. ef. 4-1-93; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0240

APNEA Monitor

(1) All necessary training to utilize services, including CPR training, is included in the rental fee.

(2) Indications and coverage:

(a) The following conditions will be considered for initial approval for a maximum of six months:

- (A) A sibling has died from SIDS;
 - (B) Symptomatic apnea due to neurological impairment;
 - (C) Craniofacial malformation likely to cause symptomatic apnea.
- (b) The following conditions will be considered for initial approval for a maximum of three months:

- (A) Symptomatic apnea of prematurity;
- (B) Observation of apparent life-threatening event (ALTE);
- (C) Receiving home oxygen (not a universal requirement, full-term infant usually does not require).

(c) The authorization may be extended if documentation is submitted to support one of the following conditions:

(A) Continues to have real alarms documented by memory monitor;

ADMINISTRATIVE RULES

(B) Upper respiratory infection when monitoring was scheduled to be discontinued (will be extended for two weeks, no memory monitor required).

(3) Documentation: The following documentation must be submitted for initial authorization of an apnea monitor:

(a) Diagnosis and statement of medical appropriateness from the prescribing practitioner; and

(b) Copies of hospital records documenting medical appropriateness; and/or

(c) Copies of sleep studies or apnea monitor with recording feature reports; and/or

(d) Documentation of ALTE from log, nursing notes or doctor's progress records.

(4) Multi-Channel Sleep Study:

(a) Indications and coverage:

(A) Sleep study must be medically appropriate;

(B) A sleep study is not required to discontinue use of an apnea monitor.

(b) Documentation: The following documentation must be submitted for initial authorization of a sleep study:

(A) Diagnosis and statement of medical appropriateness from the prescribing practitioner; and/or

(B) Copies of hospital records documenting medical appropriateness and diagnosis.

(5) Apnea Monitor, with recording feature:

(a) Indications and coverage:

(A) May be substituted for up to three months of prolonged apnea monitoring;

(B) Needed to support continuation of apnea monitoring beyond initial limits;

(C) May be substituted for apnea monitoring to determine frequency of real alarms.

(b) Documentation: The following documentation must be submitted for initial authorization of an apnea monitor with recording feature:

(A) Diagnosis and statement of medical appropriateness from the prescribing practitioner; and

(B) Copies of hospital records documenting medical appropriateness; and/or

(C) Documentation of ALTE from log, nursing notes or prescribing practitioner's progress records.

(6) Apnea Monitor Codes: Table 122-0240. [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 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 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0250

Breast Pumps

(1) Electric breast pumps will only be rented if documentation supports:

(a) Local resources were explored, e.g., Health Department, Hospital, etc.;

(b) Medical appropriateness for infant:

(A) Pre-term; or

(B) Term and hospitalized beyond five days; or

(C) Cleft palate or cleft lip; or

(D) Cranial-facial abnormalities; or

(E) Unable to suck adequately; or

(F) Re-hospitalized for longer than five days; or

(G) Failure to thrive.

(c) Medical appropriateness for mother:

(A) Has breast abscess; or

(B) Mastitis; or

(C) Hospitalized due to illness or surgery (for short-term use to maintain lactation); or

(D) Taking contraindicated medications (for short-term use to maintain lactation); and

(E) A hand pump or manual expression has been tried for one week without success in mothers with established milk supply.

(2) Other information:

(a) Electric pump is not for the comfort and convenience of the mother;

(b) Documentation that transition to breast feeding started as soon as the infant was stable enough to begin breast feeding;

(c) Use E1399 for an electric breast pump starter kit for single or double pumping;

(d) A starter kit will be reimbursed separately from the pump rental;

(e) Rental will not exceed 60 days;

(f) Supplemental Nutrition System (SNS), is not covered.

(3) Procedure Codes:

(a) E0602 — Breast pump, manual, any type — the Office of Medical Assistance Programs (OMAP) will purchase;

(b) E0603 — Breast pump, electric (AC and/or DC), any type, per day:

(A) OMAP will rent;

(B) Prior authorization required by OMAP.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 11-1998, f. & cert. ef. 4-1-98; 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 44-2004, f. & cert. ef. 7-1-04

410-122-0255

External Breast Prostheses

(1) Indications and Coverage:

(a) A breast prosthesis is covered for a client who has had a mastectomy;

(b) Useful lifetime expectancy:

(A) For silicon breast prosthesis two years;

(B) For fabric, foam, or fiber filled breast prostheses is six months.

(2) Procedure Codes: Table 122-0255. [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 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 44-2004, f. & cert. ef. 7-1-04

410-122-0260

Home Uterine Monitoring

(1) The following criteria will be used to determine payment. Monitors will be approved for:

(a) Pre-term labor — this pregnancy:

(A) Incompetent cervix;

(B) Cervical cerclage;

(C) Polyhydramnios;

(D) Anomalies of the uterus;

(E) Cone biopsy;

(F) Cervical dilation or effacement;

(G) Unknown etiology.

(b) History of pre-term labor and/or delivery;

(c) Multiple gestation.

(2) Uterine monitoring will only be approved for the above conditions between the 24th and through the completion of the 36th week of pregnancy.

(3) The allowable rental fee for the uterine monitor includes all equipment, supplies, services and nursing visits necessary for the effective use of the monitor. This does not include medications or prescribing practitioner's professional services.

(4) The client must have a telephone or reasonable access to one. The Office of Medical Assistance Programs (OMAP) will not be responsible for providing the telephone.

(5) S9001 — Uterine home monitoring, with or without associated nursing services:

(a) Prior Authorization (PA) required;

(b) OMAP will rent.

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 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 44-2004, f. & cert. ef. 7-1-04

410-122-0280

Heating/Cooling Accessories

Procedure Codes for Heating/Cooling Accessories: Table 122-0280. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

ADMINISTRATIVE RULES

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 9-1993 f. & cert. ef. 4-1-93; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; 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 44-2004, f. & cert. ef. 7-1-04

410-122-0300

Light Therapy

Table 122-0300. [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 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 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 44-2004, f. & cert. ef. 7-1-04

410-122-0320

Manual Wheelchair Base

(1) Indications and Coverage:

(a) The purchase, rental, or modification of a manual wheelchair is covered when all of the following criteria are met:

(A) The client's condition is such that without the use of a wheelchair the client would be bed-confined or confined to a non-mobile chair; and

(B) The client is not functionally ambulatory and the wheelchair is necessary to function within the home.

(b) The Office of Medical Assistance Programs (OMAP) will not pay for backup chairs. Only one wheelchair will be maintained, rented, repaired, purchased or modified for each client to meet the medical appropriateness; however, if a client's current wheelchair no longer meets the medical appropriateness or repair to the wheelchair exceeds replacement cost, a new wheelchair may be authorized. If a client has a wheelchair that meets his/her medical needs regardless of who has obtained it, OMAP will not provide another chair;

(c) One month's rental of a wheelchair is covered if a client-owned wheelchair is being repaired;

(d) The client's living quarters must be able to accommodate the requested wheelchair. OMAP will not be responsible for adapting living quarters;

(e) Backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, wheelchair gloves, and upgrades to allow performance of leisure or recreational activities are not covered;

(f) Wheelchair "poundage" (lbs) represents the weight of the usual configuration of the wheelchair without front riggings;

(g) Do not use E1399 for manual wheelchair base;

(h) Reimbursement for wheelchair codes includes:

(A) All labor charges involved in the assembly and delivery, and;

(B) All adjustments for three months after the date delivered, and;

(C) Emergency services, education and on-going assistance with use of the wheelchair for three months after date delivered.

(i) Nursing Facility:

(A) Use the correct base code for manual wheelchairs provided to clients in nursing facilities. The only wheelchairs covered in a nursing facility have been uniquely constructed, substantially modified, manual wheelchair for a specific person residing in a nursing facility;

(B) The wheelchair is considered customized when the unique seating, armrests, legrests and/or headrests, in combination, make it virtually impossible to meet another person's positioning needs in the wheelchair. Examples include, but are not limited to a pindot seating system, foam in place seating system, or other molded-to-client systems;

(C) The frame for the wheelchair base does not have to be customized or changed to meet the definition of a customized wheelchair in a nursing facility;

(D) Documentation must clearly describe the unique modification to the wheelchair and the custom seating system. Pictures of the client, measurements of body contour and completion of the OMAP 3125 by an impartial evaluator are required.

(D) When billing, use modifier U1 — Nursing Facility wheelchair.

(2) Documentation:

(a) Documentation of medical appropriateness which has been reviewed and signed by the treating prescribing practitioner (for example, CMN) must be kept on file by the DME provider;

(b) Submit list of all DME available or being used to meet the client's needs when requesting prior authorization (PA);

(c) Submit Wheelchair and Seating Prescription and Justification form (OMAP 3125) or reasonable facsimile, with recommendations for most appropriate equipment. This must be submitted by physical therapist,

occupational therapist, prescribing practitioner, or registered nurse, when requesting a PA. The evaluation must include client's functional ambulation status in their customary environment. This is not required when using K0001, K0002 or K0003 if no modifications are required;

(3) Procedure Codes: Table 122-0320. [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 18-1994(Temp), f. & cert. ef. 4-1-94; 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 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 44-2004, f. & cert. ef. 7-1-04

410-122-0325

Motorized/Power Wheelchair Base

(1) Indications and Coverage:

(a) The purchase, rental, or modification of a power wheelchair is covered when all of the following criteria are met:

(A) The client without the use of the wheelchair would be bed confined or confined to a non-mobile chair; and

(B) The client is not ambulatory or not functionally ambulatory and the wheelchair is necessary to function within the home; and

(C) The client has severe weakness of the upper extremities due to a neurological, respiratory or muscular disease/condition; and

(D) The client is unable to operate a manual wheelchair; and

(E) The client is capable of safely operating the controls for the power wheelchair; and

(F) The client's condition is such that the requirement for a power wheelchair will be long-term (at least six months).

(b) The Office of Medical Assistance Programs (OMAP) will not pay for backup wheelchairs. Only one wheelchair will be maintained, rented, repaired, purchased or modified for each client to meet the medical appropriateness; however, if a client's current wheelchair no longer meets the medical appropriateness or repair to the wheelchair exceeds replacement costs, a new wheelchair may be authorized. If a client has a wheelchair that meets his/her medical needs regardless of who has obtained it, OMAP will not provide another chair;

(c) One month's rental of a wheelchair is covered if a client-owned wheelchair is being repaired;

(d) Living quarters must be able to accommodate requested wheelchair. OMAP will not be responsible for adapting the living quarters to accommodate the wheelchair;

(e) Backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, wheelchair gloves, head lights, tail lights, and upgrades to allow performance of leisure or recreational activities are not covered;

(f) Wheelchair "poundage" (lbs.) represents the weight of the usual configuration of the wheelchair without front riggings;

(g) Do not use E1399 for motorized/power wheelchair base;

(h) Reimbursement for wheelchair codes includes all labor charges involved in the assembly and delivery of the wheelchair and all adjustments for three months after date the client takes delivery. Reimbursement also includes emergency services, education and on-going assistance with use of the wheelchair for three months after the client takes delivery;

(i) Codes K0010 — K0014 are not used for manual wheelchairs with add-on power packs. Use the appropriate code for the manual wheelchair base provided (K0001 — K0009) and codes K0460 or K0461 for the add-on power packs.

(2) Documentation:

(a) Documentation of medical appropriateness which has been reviewed and signed by the treating prescribing practitioner (for example, CMN) must be kept on file by the DME provider;

(b) Submit list of all DME available or being used to meet the client's needs when requesting prior authorization (PA);

(c) Submit Wheelchair and Seating Prescription and Justification form (OMAP 3125) or reasonable facsimile, with recommendations for most appropriate equipment. This must be submitted by physical therapist, occupational therapist, prescribing practitioner, or registered nurse, when requesting a PA. The evaluation must include client's functional ambulation status in their customary environment.

(3) Table 122-0325. Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

ADMINISTRATIVE RULES

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 44-2004, f. & cert. ef. 7-1-04

410-122-0330

Power-Operated Vehicle

(1) Indications and Coverage:

(a) The purchase, rental, or modification of a power-operated vehicle (POV) is covered when all of the following criteria are met:

(A) A physician specializing in the practice of physiatry, orthopedics neurology or rheumatology must provide a clinical evaluation of the client's medical and physical condition and a prescription for the vehicle. If a specialist is not reasonably accessible, e.g., more than 1 day's round trip from the client's home, or the client's condition precludes such travel;

(B) The client:

(i) Would be bed confined or confined to a non-mobile chair without the use of a POV;

(ii) Is unable to operate a manual wheelchair;

(iii) Is capable of safely operating the controls for the POV;

(iv) can transfer safely in and out of the POV and has adequate trunk stability to be able to safely ride in the POV;

(v) Must be able to accommodate the requested POV inside their living quarters. The Office of Medical Assistance Programs (OMAP) will not be responsible for adapting living quarters.

(C) The cost of the POV includes all options and accessories that are provided at the time of initial purchase, including but not limited to batteries, battery chargers, seating systems, etc.

(b) One month's rental of a POV is covered if a client-owned POV is being repaired;

(c) Replacement parts for a client owned POV, should be billed using the specific wheelchair accessory HCPCS. Use K0108 if a specific code does not exist;

(d) Only one wheelchair or POV will be rented or purchased to meet the medical need. OMAP will not pay for backup chairs.

(2) Documentation:

(a) Documentation of medical appropriateness which has been reviewed and signed by the evaluating prescribing practitioner (for example, CMN) must be kept on file by the durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) provider;

(b) Submit list of all DMEPOS available or being used to meet the client's needs when requesting prior authorization (PA);

(c) The elements of a clinical evaluation should detail (not all inclusive):

(A) Current limitations of ambulation;

(B) Lower and upper extremity body strength;

(C) Other medical conditions that potentially impact operation of a manual wheelchair or POV, such as sensory defects, cardiopulmonary limitations, or rheumatologic disease;

(D) Intended use and expected benefit of the POV;

(E) Physical limitations should be objective and quantitative;

(F) Client's functional ambulation status in their customary environment.

(3) E1230 — Power operated vehicle (3 or 4 wheel non-highway):

(a) PA required;

(b) OMAP will purchase, rent and repair;

(c) Item considered purchased after 16 months of rent;

(d) Initial batteries and battery charger are included in the cost.

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 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04

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 — Adjustable height armrests are covered if the client:

(a) Requires an arm height that is different than what is available using non-adjustable arms, and;

(b) Spends at least two hours per day in the wheelchair.

(4) 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.

(5) Batteries/chargers for motorized/power wheelchairs are separately payable from the purchased wheelchair base.

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 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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0360

Canes and Crutches

(1) Indications and Coverage: When prescribed by a practitioner for a client with a condition causing impaired ambulation and there is a potential for ambulation.

(2) A white cane for a visually impaired client is considered to be a self-help item and is not covered by the Office of Medical Assistance Programs (OMAP).

(3) Table 122-0360. [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 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 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04

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) The prescription;

(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;

(g) List of all DME owned or available for client's use.

ADMINISTRATIVE RULES

- (3) Gait Belts:
 - (a) Covered when:
 - (A) The client weighs 60 lbs. or more, and;
 - (B) The care provider is trained in the proper use, and;
 - (C) The client can walk independently, but needs:
 - (i) A minor correction of ambulation, or;
 - (ii) Needs minimal or standby assistance to walk alone, or;
 - (iii) Requires assistance with transfer.
 - (b) Use code E1399.

(4) Coverage criteria for standing frame systems, prone standers, supine standers or boards and accessories for standing frames:

(a) The client must be sequentially evaluated by a physical or occupational therapist to make certain the client can tolerate and obtain medical benefit;

(b) The client must be following a therapy program initially established by a physical or occupational therapist;

(c) The home must be able to accommodate the equipment;

(d) The weight of client must not exceed manufacturer's weight capacity;

(e) The client has demonstrated an ability to utilize independently or with caregiver;

(f) The client has demonstrated compliance with other programs;

(g) The client has demonstrated a successful trial period in a monitored setting;

(h) The client does not have access to equipment from another source.

(5) The following must be met in addition to the criteria listed for sidelyers and custom positioners:

(a) The client must be sequentially evaluated by a physical or occupational therapist to make certain the client can tolerate and obtain medical benefit;

(b) The client must be following a therapy program initially established by a physical or occupational therapist;

(c) The home must be able to accommodate the equipment;

(d) The caregiver and/or family are capable of using the equipment appropriately.

(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.

(7) Procedure Codes — Table 122-0365: [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 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; OMAP 44-2004, f. & cert. ef. 7-1-04

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.

(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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0380

Hospital Beds

(1) Definitions:

(a) Fixed Height Hospital Bed — A fixed height hospital bed is one with manual head and leg elevation adjustments but no height adjustment;

(b) Variable Height Hospital Bed — A variable height hospital bed is one with manual height adjustment and with manual head and leg elevation adjustments;

(c) Semi-Electric Hospital Bed — A semi-electric bed is one with manual height adjustment and with electric head and leg elevation adjustments.

(2) Hospital Bed Criterion:

(a) 1 — Client 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) 2 — Client requires, for alleviation of pain, positioning of the body in ways not feasible with an ordinary bed;

(c) 3 — Client 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) 4 — Client requires traction equipment which can only be attached to a hospital bed;

(e) 5 — Client's level of functioning can only be met with a hospital bed.

(f) 6 — Client is capable of operating the controls;

(g) 7 — Client requires frequent changes in body position and/or has an immediate need for a change in body position;

(h) 8 — 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;

ADMINISTRATIVE RULES

(i) 9 — Client weighs more than 350 pounds.

(3) Indications and coverage:

(a) Fixed Height Hospital Beds are covered when the client meets criterion:

(A) 1, 2, 3, or 4, and;

(B) 5.

(b) Variable Height Hospital Beds are covered when the client meets criterion:

(A) 1, 2, 3, or 4, and;

(B) 5 and 8.

(c) Semi-Electric Hospital Beds are covered when the client meets criterion:

(A) 1, 2, 3, or 4, and;

(B) 5, 6, and 7.

(d) Heavy-Duty and Extra Heavy-Duty Hospital Beds are covered when the client meets criterion:

(A) 1, 2, 3, or 4, and;

(B) 5, 6, 7, and 9.

(4) 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;

(d) In addition to the above documentation requirements, you must document:

(A) The reasons why a variable height bed does not meet the needs of the client when requesting PA for semi-electric hospital beds, and;

(B) The client's height and weight when requesting PA for Heavy-Duty and Extra Heavy-Duty hospital beds.

(5) Procedure Codes — Table 122-0380. [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 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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0400

Pressure Reducing Support Surfaces

(1) Definitions:

(a) Comprehensive Ulcer Treatment Program — generally includes:

(A) Education of the client and caregiver on the prevention and/or management of pressure ulcers;

(B) Regular assessment by a nurse, prescribing practitioner, or other licensed health care practitioner (usually at least weekly for a client with a stage III or IV ulcer);

(C) Appropriate turning and positioning, including instruction and frequency intervals;

(D) Appropriate wound care (for a stage II, III or IV ulcer);

(E) Appropriate management of moisture/incontinence;

(F) Nutritional assessment and intervention consistent with the overall plan of care.

(b) Mattress Overlay — Device designed to be placed on top of a standard hospital or home mattress;

(c) Mattress Replacement — Device that takes the place of the standard hospital or home mattress;

(d) Bottoming Out — The finding that an outstretched hand can readily palpate the bony prominence (coccyx or lateral trochanter) when it is placed palm up beneath the undersurface of the mattress or overlay and in an area under the bony prominence. This bottoming out criterion should be tested with the client in the supine position with the head flat, in the supine position with the head slightly elevated (no more than 30 degrees) and in the sidelying position;

(e) The staging of pressure ulcers used in this policy is as follows:

(A) Stage 1 — Non-blanchable erythema of intact skin;

(B) Stage 2 — Partial thickness skin loss involving epidermis and/or dermis;

(C) Stage 3 — Full thickness skin loss involving damage or necrosis of subcutaneous tissue that may extend down to, but not through, underlying fascia;

(D) Stage 4 — Full thickness skin loss with extensive destruction, tissue necrosis or damage to muscle, bone or supporting structures.

(f) Home — Adult foster care, assisted living facility, residential care facilities, and private residence.

(2) Group 1

(a) Indications and Coverage — Covered if the client:

(A) Does not bottom out, and;

(B) Has a care plan established by the prescribing practitioner or other licensed health care practitioner directly involved in the client's care, which must include a comprehensive ulcer treatment program (see section (1)), and;

(C) Meets Group 1:

(i) Criterion (1), or;

(ii) Criterion (2) or (3) and at least one of criteria (4) through (7).

(b) Criterion:

(A) 1 — Completely immobile (e.g., client cannot make changes in body position without assistance);

(B) 2 — Limited mobility (e.g., client cannot independently make changes in body position significant enough to alleviate pressure);

(C) 3 — Any stage pressure ulcer on the trunk or pelvis;

(D) 4 — Impaired nutritional status;

(E) 5 — Fecal or urinary incontinence;

(F) 6 — Altered sensory perception;

(G) 7 — Compromised circulatory status.

(c) Documentation: Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner must be kept on file by the DME provider and submitted with the prior authorization (PA) request;

(d) Procedure Codes — Table 122-0400-1: [Table not included. See ED. NOTE.]

(A) The following additional criteria applies to codes A4640, E0180, and E0181 — An air pump or blower which provides:

(i) Either sequential inflation and deflation of air cells or a low interface pressure throughout the overlay, and;

(ii) Inflated cell height of the air cells through which air is being circulated is 2.5" or greater, and;

(iii) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling and air pressure provide adequate client lift, reduces pressure, and prevents bottoming out.

(B) The following additional criteria applies to codes E0186, E0187, and E0196:

(i) Total height of 5" or greater, durable waterproof cover and can be placed directly on a hospital bed frame, and;

(ii) Non-powered pressure reducing mattress.

(3) Group 2:

(a) Indication and Coverage — Covered if all of the following are met:

(A) The client is in a home setting or nursing facility;

(B) The client is confined to a bed or chair as a result of severely limited mobility;

(C) In the home setting, a willing and trained adult caregiver is available to assist the client with:

(i) Activities of daily living;

(ii) Fluid balance;

(iii) Skin care;

(iv) Repositioning;

(v) Recognition and management of altered mental status;

(vi) Dietary needs;

(vii) Prescribed treatments, and;

(viii) Management of the pressure reducing support surface.

(D) A prescribing practitioner must coordinate the home treatment regimen, which will include the use of other treatment modalities, where applicable, including, but not limited to nursing care, appropriate nutrition, and the creation of a tissue-growth environment:

(E) The client meets:

(i) Criterion (1) and (2) and (3); or

(ii) Criterion (4); or

(iii) Criterion (5) or (6):

(b) Criterion definitions:

(A) 1 — Multiple stage II pressure ulcers located on the trunk or pelvis;

ADMINISTRATIVE RULES

(B) 2 — Client has been on a comprehensive ulcer treatment program for at least 30 consecutive days which has included the use of an appropriate group I support surface;

(C) 3 — The ulcers have worsened or remained the same over the last 30 days;

(D) 4 — Large or multiple stage III or IV pressure ulcer(s) on the trunk or pelvis;

(E) 5 — Recent myocutaneous flap or skin graft for a pressure ulcer on the trunk or pelvis (surgery within the past 60 days). All other criteria is waived for this condition;

(F) 6 — The client has been on a Group 2 or 3 support surface immediately prior to a recent discharge from a hospital or nursing facility (discharge within the past 30 days).

(c) The allowable rental fee includes all equipment, supplies, and service appropriate for the effective use of the support surface;

(d) Not covered for the prevention of pressure ulcers or pain control;

(e) Documentation:

(A) The following documentation must be submitted with the initial request for clients in the home setting or nursing facility:

(i) A prescribing practitioner prescription;

(ii) An evaluation done by the resident care manager (for clients in a nursing facility) or licensed health professional, which includes:

(I) A description of the underlying condition — diagnosis, prognosis, rehabilitation potential and nutritional status;

(II) A comprehensive assessment and evaluation of the individual after conservative treatment with other pressure reducing products or methods has been tried without success;

(III) A statement of goals for stepping down the intensity of support therapy.

(iii) A summary of a nutritional assessment by a registered dietician (for clients in a nursing facility) or licensed health professional, within the last 90 days

(iv) Client's height and weight, may approximate if unable to obtain;

(v) Pre-albumin and total lymphocyte count values within the last 60 days;

(vi) Written description of pressure ulcers, which includes:

(I) Numbers;

(II) Locations;

(III) Sizes, and;

(IV) Stages.

(vii) Dated photographs of pressure ulcers;

(viii) Pressure ulcers on extremities must have documentation of the reason why pressure cannot be relieved by other methods. This simply means that the medical appropriateness for special pressure reducing products must be proven and documented.

(B) For clients who are not in a nursing facility, the following documentation must be submitted in addition to the previous documentation for the initial request:

(i) The client is receiving skilled wound care nursing services either through a home health agency or through the private duty nurse program;

(ii) A copy of the comprehensive ulcer treatment program (see section (1) of this rule for definition), which is client specific and includes but is not limited to the following:

(I) The number of hours per 24-hour period that the pressure reducing support surface will be utilized;

(II) Any contributing factors, such as mobility status, impaired sensory perception, circulatory status, etc.;

(III) Treatment must include healing;

(IV) Documentation that a trained caregiver is willing and able to assist or supervise in carrying out the prescribed treatment regimen and to support the use and management of the pressure reducing support surface.

(V) If the client has had a recent myocutaneous flap or skin graft, include a copy of the operative report, and care plan.

(C) For subsequent requests, submit the following documentation:

(i) Dated photographs of pressure ulcers;

(ii) Copies of skin flow sheets;

(iii) Copies of any pertinent notes in the progress records;

(iv) Copies of records supporting changes in laboratory values or nutritional status;

(v) Written description of pressure ulcers by nurse, prescribing practitioner, or other licensed health care practitioner, including:

(I) Numbers;

(II) Locations;

(III) Sizes, and;

(IV) Stages.

(vi) Copy of current care plan.

(D) The payment of pressure reducing support surfaces will not be renewed if:

(i) Assessed as being a low risk for further breakdown; or

(ii) Care plan goals are not being met.

(f) Procedure Codes — Table 122-0400-2: [Table not included. See ED. NOTE.]

(A) The following additional criteria applies to codes for powered pressure reducing mattresses/overlays (E0193, E0277, and E0372):

(i) An air pump or blower which provides either sequential inflation and deflation of the air cells or a low interface pressure throughout the mattress/overlay;

(ii) Inflated cell height of the air cells through which air is being circulated is:

(I) 5" or greater for mattresses;

(II) 3" or greater for overlays.

(iii) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling (for alternating pressure mattresses/overlays), and air pressure provide adequate client lift, reduce pressure and prevent bottoming out;

(iv) A surface designed to reduce friction and shear.

(B) The following additional criteria applies to codes for non-powered pressure reducing mattresses/overlays (E0371 and E0373):

(i) Height and design of individual cells which provide significantly more pressure reduction than a Group 1 mattress/overlay and prevent bottoming out;

(ii) Total height of:

(I) 5" or greater for mattresses;

(II) 3" or greater for overlays.

(iii) A surface designed to reduce friction and shear;

(iv) Documented evidence to substantiate that the product is effective for the treatment of conditions described by the coverage criteria for Group 2 support surfaces.

(4) Group 3 — Air-fluidized beds are not covered.

[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 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 44-2004, f. & cert. ef. 7-1-04

410-122-0420

Hospital Bed Accessories

(1) Table 122-0420. [Table not included. See ED. NOTE.]

(2) Trapeze Bars:

(a) Indications and Coverage: Trapeze bars are indicated when client needs this device to sit up because of respiratory condition, to change body position for other medical reasons, or to get in or out of bed;

(b) Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner must be kept on file by the DME provider;

(c) See Table 122-0420 for procedure codes. [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 17-1996, f. & cert. ef. 8-1-96; 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 44-2004, f. & cert. ef. 7-1-04

410-122-0470

Supports and Stockings

(1) Cosmetic support panty hose (i.e., Leggs®, No Nonsense®, etc.) are not covered.

(2) Procedure Codes — Table 122-0470. [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 44-2004, f. & cert. ef. 7-1-04

410-122-0475

Therapeutic Shoes for Diabetics

(1) Indications and Coverage:

ADMINISTRATIVE RULES

(a) For each client, coverage of the footwear and inserts is limited to one of the following within one calendar year:

(A) One pair of custom molded shoes (including inserts provided with such shoes) and two additional pair of inserts; or

(B) One pair of extra-depth shoes (not including inserts provided with such shoes) and three pairs of inserts.

(b) An individual may substitute modification(s) of custom molded or extra-depth shoes instead of obtaining one pair of inserts, other than the initial pair of inserts. The most common shoe modifications are:

(A) Rigid rocker bottoms;

(B) Roller bottoms;

(C) Metatarsal bars;

(D) Wedges;

(E) Offset heels.

(c) Payment for any expenses for the fitting of such footwear is included in the fee;

(d) Payment for the certification of the need for therapeutic shoes and for the prescription of the shoes (by a different practitioner from the one who certifies the need for the shoes) is considered to be included in the visit or consultation in which these services are provided;

(e) Following certification by the physician managing the client's systemic diabetic condition, a podiatrist or other qualified practitioner, knowledgeable in the fitting of the therapeutic shoes and inserts, may prescribe the particular type of footwear necessary.

(2) Documentation:

(a) The practitioner who is managing the individual's systemic diabetic condition documents that the client has diabetes and one or more of the following conditions:

(A) Previous amputation of the other foot, or part of either foot;

(B) History of previous foot ulceration of either foot;

(C) History of pre-ulcerative calluses of either foot;

(D) Peripheral neuropathy with evidence of callus formation of either foot;

(E) Foot deformity of either foot; or

(F) Poor circulation in either foot; and

(G) Certifies that the client is being treated under a comprehensive plan of care for his or her diabetes and that he or she needs therapeutic shoes.

(b) Documentation of the above criteria, may be completed by the prescribing practitioner or supplier but must be reviewed for accuracy of the information and signed and dated by the certifying physician to indicate agreement and must be kept on file by the DME supplier.

(3) Procedure Codes — Table 122-0475. [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 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 44-2004, f. & cert. ef. 7-1-04

410-122-0480

Pneumatic Compression Devices (Used for Lymphedema)

(1) A pneumatic compression device (lymphedema pump) is medically appropriate only for the treatment of refractory lymphedema involving one or more limbs.

(2) Causes of lymphedema include but are not limited to the following conditions with a diagnosis on the currently funded lines of the Prioritized List of Health Services:

(a) Spread of malignant tumors to regional lymph nodes with lymphatic obstruction;

(b) Radical surgical procedures with removal of regional groups of lymph nodes;

(c) Post-radiation fibrosis;

(d) Scarring of lymphatic channels (e.g., those with generalized refractory edema from venous insufficiency which is complicated by recurrent cellulitis); when all of the following criteria have been met:

(A) There is significant ulceration of the lower extremity(ies);

(B) The client has received repeated, standard treatment from a practitioner using such methods as a compression bandage system or its equivalent;

(C) The ulcer(s) have failed to heal after six months of continuous treatment.

(e) Congenital anomalies.

(3) Pneumatic compression devices may be covered only when prescribed by a practitioner and when they are used with appropriate practitioner oversight, i.e., practitioner evaluation for the client's condition to

determine medical appropriateness of the device, suitable instruction in the operation of the machine, a treatment plan defining the pressure to be used and the frequency and duration of use, and ongoing monitoring of use and response to treatment. Used as treatment of last resort.

(4) All pressure devices require a one-month trial period prior to purchase. The rental period is applied toward purchase.

(5) All necessary training to utilize a pressure device is included in rental or purchase fee.

(6) Documentation:

(a) The practitioner must document the client's condition, medical appropriateness and instruction as to the pressure to be used, the frequency and duration of use and that the device is achieving the purpose of reduction and control of lymphedema;

(b) The determination by the practitioner of the medical appropriateness of pneumatic compression device must include:

(A) The client's diagnosis and prognosis;

(B) Symptoms and objective findings, including measurements which establish the severity of the condition;

(C) The reason the device is required, including the treatments which have been tried and failed; and

(D) The clinical response to an initial treatment with the device. The clinical response includes the change in pre-treatment measurements, ability to tolerate the treatment session and parameters, and ability of the client (or caregiver) to apply the device for continued use in the home.

(c) Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner (for example, CMN) must be kept on file by the DME provider;

(d) If the client has venous stasis ulcers, documentation supporting the medical appropriateness for the device should include a signed and dated statement from the prescribing practitioner indicating:

(A) The location and size of venous stasis ulcer(s);

(B) How long each ulcer has been continuously present;

(C) Whether the client has been treated with regular compression bandaging for the past six months;

(D) Whether the client has been treated with custom fabricated gradient pressure stockings/sleeves, approximately when, and the results of the treatment;

(E) Other treatment for the venous stasis ulcer(s) during the past six months;

(F) Whether the client has been seen regularly by a practitioner for treatment of venous stasis ulcer(s) during the past six months.

(7) Procedure Codes — Table 122-0480. [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. 1-1-94; 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 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 44-2004, f. & cert. ef. 7-1-04

410-122-0500

Transcutaneous Electrical Nerve Stimulator (TENS)

(1) Indications and Coverage:

(a) A transcutaneous electrical nerve stimulator (TENS) is covered when it is medically appropriate in the treatment of clients with chronic, intractable pain or acute post-operative pain who meet the criteria;

(b) May be covered for acute post-operative pain for no more than one month following day of surgery. Continued coverage requires further documentation;

(c) Not covered:

(A) To treat motor function disorders;

(B) For acute pain (less than three months duration) other than post-operative pain;

(C) For etiology that is not accepted as responding to TENS (e.g., headache, visceral abdominal pain, pelvic pain, temporomandibular joint (TMJ) pain and others).

(d) Two month trial period of rental:

(A) A two-month trial period of rental is required prior to purchase. Rental price starting with the initial date of service applies to purchase price regardless of payor;

(B) Included in the rental price are: adapters (snap, banana, alligator, tab, button), belt clips, adhesive remover, leadwires, electrodes, additional connecting cable for lead wires, carrying pouches or covers, all necessary training and one month's worth of TENS supplies for each month rented;

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(C) There should be no separate billing and there will be no separate allowance for replacement electrodes (A4556), conductive paste or gel (A4558), replacement batteries (A4630) or a battery charger.

(2) Documentation:

(a) Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner (for example, CMN) must be kept on file by the DME provider;

(b) For initial request for rental:

(A) For post-operative pain include type and date of surgery and diagnosis, other appropriate treatment modalities tried, including names and dosage of medication, length of each treatment time and the results;

(B) For chronic intractable pain include etiology, length of time pain has been present (must have been present for at least three months), location of pain and other treatment tried and failed.

(c) For purchase following rental: Proof of efficacy and compliance from the prescribing practitioner;

(d) To continue supplies: The following documentation must be received every six months:

(A) A new CMN; or

(B) Other documentation of medical appropriateness.

(3) Procedure Codes — Table 122-0500. [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 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 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0510

Electronic Stimulators

(1) Osteogenic Stimulators — Indications and Coverage:

(a) Non-spinal Electrical Osteogenesis Stimulator:

(A) A non-spinal electrical osteogenesis stimulator is covered only if any of the following criteria are met:

(i) Nonunion of a long bone fracture defined as radiographic evidence that fracture healing has ceased for three or more months prior to starting treatment with the osteogenesis stimulator; or

(ii) Failed fusion of a joint other than in the spine where a minimum of nine months has elapsed since the last surgery; or

(iii) Congenital pseudarthrosis.

(B) Non-union of a long bone fracture must be documented by a minimum of two sets of radiographs obtained prior to starting treatment with the osteogenesis stimulator, separated by a minimum of 90 days, each including multiple views of the fracture site, and with a written interpretation by a prescribing practitioner stating that there has been no clinically significant evidence of fracture healing between the two sets of radiographs.

(b) Ultrasonic Osteogenic Stimulators:

(A) Use of ultrasonic osteogenic stimulator is only covered when all of the following criteria are met:

(i) Non-union of a fracture documented by a minimum of two sets of radiographs obtained prior to starting treatment with the osteogenesis stimulator, separated by a minimum of 90 days. Each radiograph must include multiple views of the fracture site accompanied with a written interpretation by a prescribing practitioner stating that there has been no clinically significant evidence of fracture healing between the two sets of radiographs; and

(ii) Documentation that the client failed at least one surgical intervention for the treatment of the fracture.

(B) Not covered:

(i) Non-unions of the skull, vertebrae, and those that are tumor related;

(ii) When used concurrently with other noninvasive osteogenic devices;

(iii) Fresh fractures and delayed unions.

(c) Spinal Electrical Osteogenesis Stimulator — Use of the noninvasive spinal electrical osteogenesis stimulator is only covered for the following indications:

(A) Failed spinal fusion where a minimum of nine months has elapsed since the last surgery; or

(B) Following a multilevel spinal fusion surgery; or

(C) Following spinal fusion surgery where there is a history of a previously failed spinal fusion at the same site.

(d) Documentation:

(A) The following must be submitted for authorization for osteogenesis stimulators:

(i) Documentation of other alternative treatments tried but found ineffective;

(ii) Copies of prescribing practitioner's progress records;

(iii) Copies of X-ray reports;

(iv) Copies of surgical reports for authorization of ultrasonic osteogenic stimulators;

(v) Statement of medical appropriateness or copy of CMN from prescribing practitioner.

(B) Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner (for example, CMN) must be kept on file by the Durable Medical Equipment (DME) provider.

(c) Procedure Codes — Table 122-0510. [Table not included. See ED. NOTE.]

(2) Neuromuscular Stimulator:

(a) Indications and Coverage:

(A) Treatment of disuse atrophy where the nerve supply to the muscle is intact, including brain, spinal cord, and peripheral nerves, and other non-neurological reasons for disuse are causing atrophy. Examples include but are not limited to:

(i) Casting or splinting of a limb;

(ii) Contracture due to scarring of soft tissue as in burn lesions;

(iii) Hip replacement surgery (until orthotic training begins).

(B) Relation of muscle spasm;

(C) Prevention or retardation of disuse atrophy;

(D) Re-education of muscle;

(E) Increasing local blood circulation;

(F) Maintaining or increasing range of motion.

(b) Documentation. The following must be submitted for authorization:

(A) Copies of prescribing practitioner's progress records;

(B) Statement of medical appropriateness from prescribing practitioner;

(C) Copy of practitioner's prescription;

(D) Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner must be kept on file by the DME provider.

(c) Procedure Codes — Table 122-0510. [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 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; 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 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 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0520

Diabetic Supplies

(1) Indications and Coverage:

(a) Home blood glucose monitors are indicated for clients who are diabetics and who can better control their blood glucose levels by frequently checking and appropriately contacting their treating practitioner for advice and treatment;

(b) Coverage of home blood glucose monitors is limited to clients meeting all of the following conditions:

(A) The client has diabetes which is being treated by a practitioner; and

(B) The glucose monitor and related accessories and supplies have been ordered by a practitioner who is treating the client's diabetes; and

(C) The client or caregiver has successfully completed training or is scheduled to begin training in the use of the monitor, test strips, and lancing devices; and

(D) The client or caregiver is capable of using the test results to assure the client's appropriate glycemic control; and

(E) The device is designed for home use.

(c) Purchase fee includes normal, low and high-calibrator solution/chips (A4256), battery (A4254), and spring-powered lancet device (A4258).

(2) Documentation:

(a) Documentation of medical appropriateness which has been reviewed and signed by the treating 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 100 blood glucose test strips per

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month for insulin dependent diabetes mellitus) documentation supporting the medical appropriateness for the higher utilization must be on file in the DME provider's records;

(c) The DME provider is required to have a new written order from the treating practitioner every 12 months.

(3) Procedure Codes — Table 122-0520. [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 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 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0525

External Insulin Infusion Pump

(1) Coverage for an external insulin infusion pump for the 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, must meet criteria (a) or (b):

(a) The client has:

(A) Completed a comprehensive diabetes education program;

(B) 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;

(C) 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;

(D) A Glycosylated hemoglobin level (HbA1C) greater than 7%, and

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:

(A) Been on an external insulin infusion pump prior to enrollment in the Medical Assistance Program, and;

(B) Documented frequency of glucose self-testing an average of at least four times per day during the month prior to Medical Assistance Program enrollment.

(2) 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.

(3) 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 dieticians who are knowledgeable in the use of continuous subcutaneous insulin infusion therapy.

(4) 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.

(5) Procedure Codes — Table 122-0525. [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 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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0530

Proof of Delivery

(1) Suppliers are required to maintain proof of delivery documentation in their files.

(2) Proof of delivery requirements are based on the method of delivery.

(3) A delivery slip is required for items delivered directly by the supplier to the client or authorized representative. The delivery slip must include the following:

(a) The client or authorized representative's signature with the date the items were received (when billing, use this date as the date of service); and

(b) The client's name; and

(c) The quantity, brand name, serial number and a detailed description of the items being delivered.

(4) A tracking slip and a supplier's shipping invoice is required for items delivered by a delivery/shipping service to the client or authorized representative:

(a) The supplier's shipping invoice must include the:

(A) Client's name, and;

(B) Quantity, brand name, serial number and a detailed description of the items being delivered, and;

(C) Delivery service's package identification number associated with the client's packages, and;

(D) Shipping date (when billing, use this date as the date of service).

(b) The delivery service's tracking slip must reference:

(A) Each client's packages, and;

(B) The delivery address and corresponding package identification number given by the delivery service.

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 44-2004, f. & cert. ef. 7-1-04

410-122-0540

Ostomy Supplies: Colostomy, Ileostomy, Ureterostomy

(1) Indications and Coverage: The use of ostomy supplies are covered for clients with a surgically created opening (stoma) to divert urine, feces, or ilial contents to outside of the body.

(2) Documentation: The prescription, and documentation of medical appropriateness which has been reviewed and signed 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.]

[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; OMAP 44-2004, f. & cert. ef. 7-1-04

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 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, 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; OMAP 44-2004, f. & cert. ef. 7-1-04

ADMINISTRATIVE RULES

410-122-0580

Bath Supplies

(1) Indications and Coverage — A rehab shower/commode chair is covered when all of the following criteria are met:

(a) Client is unable to use a standard shower chair/bench due to a musculoskeletal condition;

(b) Client has positioning, trunk stability or neck support needs that a standard shower chair/bench cannot provide;

(c) The home (shower) can accommodate a rehab/shower chair;

(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 the above criteria, 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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0590

Patient Lifts

(1) Indications and Coverage — A lift is covered if transfer between bed and a chair, wheelchair, or commode requires the assistance of more than one person and, without the use of a lift, the client would be bed confined.

(2) Procedure Codes:

(a) E0621 — Sling or seat, client lift, canvas or nylon:

(A) The Office of Medical Assistance Programs (OMAP) will purchase;

(B) Prior authorization (PA) required;

(C) Not covered at the same time as E0630 or E0635.

(b) E0630 — Client lift, hydraulic with seat or sling:

(A) OMAP will purchase;

(B) OMAP will rent;

(C) OMAP will repair;

(D) PA required;

(E) Item considered purchased after 16 months of rent.

(c) E0635 — Client lift, electric, with seat or sling:

(A) OMAP will purchase;

(B) OMAP will rent;

(C) OMAP will repair;

(D) PA required;

(E) Item considered purchased after 16 months of rent.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0600

Toilet Supplies

(1) Commodes:

(a) Covered when the client is physically incapable of utilizing regular toilet facilities. This would occur when the client is confined to:

(A) A single room; or

(B) One level of the home environment and there is no toilet on that level; or

(C) The home and there are no toilet facilities in the home.

(b) Documentation: The practitioner's records must contain information which supports the medical appropriateness of the item ordered;

(2) Extra-wide/heavy-duty commodes:

(a) Are covered when the client weighs 300 pounds or more and meets the criteria for commodes;

(b) Documentation: Documentation must include the prescription and the client's height and weight. Submit this information when requesting prior authorization;

(3) Procedure Codes — Table 122-0600. [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 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 17-1996, f. & cert. ef. 8-1-96; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 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 44-2004, f. & cert. ef. 7-1-04

410-122-0620

Miscellaneous Supplies

Procedure Codes — Table 122-0620. [Table not included. See ED. NOTE.]

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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0625

Surgical Dressing

Procedure Codes — Table 122-0625. [Table not included. See ED. NOTE.]

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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0630

Incontinent Supplies

(1) For this rule, as determined by Center for Medicare/Medicaid Services (CMS), "adult diapers" stands for adult briefs, and "child and adult briefs" stands for protective underwear.

(2) Incontinent supplies are not covered for clients under age 3.

(3) The limits shown for each code are based on medical appropriateness. When requesting an amount above the limits shown, you must submit documentation supporting why the higher amount is medically appropriate.

(4) Briefs are not covered for nocturnal enuresis.

(5) Washable briefs/protective underwear (A4536) and disposable briefs (A4525, A4526, A4527, A4528, A4531, A4532 and A4534) may be covered at the same time when the disposable briefs are used for trips (i.e., visit to the doctor, physical therapist, etc.). The number of units must not exceed the limit.

(6) Procedure Codes — Table 122-0630-1. [Table not included. See ED. NOTE.]

(7) Disposable Protective Underwear:

(a) Indications and Coverage: Covered when the client has:

(A) Fecal or urinary incontinence; and

(B) Documented bowel and bladder retraining program, and;

(C) Partial ability to be continent, and;

(D) Documented treatment failure with other, less-expensive products; and either

(i) Autism with tactile aversion; or

(ii) Other medically appropriate reasons.

(b) Documentation — Documentation to be submitted with request for PA:

(A) Bowel and bladder retraining program (this can be in the form of a care plan);

(B) Medical reason for incontinence;

(C) Medical proof that other products have been tried and failed;

(D) Documented progress of achieving or maintaining goals of bowel and bladder retraining program.

(8) Quantity specification:

(a) For prior authorization (PA) and reimbursement purpose, a unit count is considered as single or individual piece of an item and not as multiple quantity;

(b) If an item quantity is listed as number of boxes or case or carton, total number of individual pieces of that item contained within that respective measurement (box or case or carton) must be specified in the unit column on PA request form. See table 122-0630-2.

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

Stat. Auth.: ORS 409

ADMINISTRATIVE RULES

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 64-2001, 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 76-2003, f. & cert. ef. 10-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0640

Eye Prostheses

(1) Indications and Coverage:

(a) An eye prosthesis is indicated for a client (adult or child) with absence or shrinkage of an eye due to birth defect, trauma or surgical removal;

(b) Polishing and resurfacing will be allowed on a yearly basis;

(c) Replacement is covered every five years with extensions allowed when documentation supports medical appropriateness for more frequent replacement.

(2) Documentation: Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner (for example, CMN) must be kept on file by the DME provider.

(3) Procedure Codes — Table 122-0640. [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 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; 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 44-2004, f. & cert. ef. 7-1-04

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:

(A) OAR 410-122-0470 Supports and Stockings;

(B) OAR 410-122-0255 External Breast Prosthesis, and;

(C) OAR 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:

(A) L1500;

(B) L1510; and

(C) 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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0678

Dynamic Adjustable Extension/Flexion Device

Procedure Codes — Table 122-0678. [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 44-2004, f. & cert. ef. 7-1-04

410-122-0680

Facial Prostheses

(1) Indications and Coverage:

(a) Covered when there is loss or absence of facial tissue due to disease, trauma, surgery, or a congenital defect;

(b) Adhesives, adhesive remover and tape used in conjunction with a facial prosthesis are covered. Other skin care products related to the prosthesis, including but not limited to cosmetics, skin cream, cleansers, etc., are not covered;

(c) The following services and items are included in the allowance for a facial prosthesis:

(A) Evaluation of the client;

(B) Pre-operative planning;

(C) Cost of materials;

(D) Labor involved in the fabrication and fitting of the prosthesis;

(E) Modifications to the prosthesis made at the time of delivery of the prosthesis or within 90 days thereafter;

(F) Repair due to normal wear or tear within 90 days of delivery;

(G) Follow-up visits within 90 days of delivery of the prosthesis.

(d) Modifications to a prosthesis that occur more than 90 days after delivery of the prosthesis and that are required because of a change in the client’s condition are covered;

(e) Repairs are covered when there has been accidental damage or extensive wear to the prosthesis that can be repaired. If the expense for repairs exceeds the estimated expense for a replacement prosthesis, no payments can be made for the amount of the excess;

(f) Follow-up visits which occur more than 90 days after delivery and which do not involve modification or repair of the prosthesis are non-covered services;

(g) Replacement of a facial prosthesis is covered in cases of loss or irreparable damage or wear or when required because of a change in the client’s condition that cannot be accommodated by modification of the existing prosthesis;

(h) When a prosthesis is needed for adjacent facial regions, a single code must be used to bill for the item, whenever possible. For example, if a defect involves the nose and orbit, this should be billed using the hemifacial prosthesis code and not separate codes for the orbit and nose. This would apply even if the prosthesis is fabricated in two separate parts.

(2) Documentation: The following must be submitted for prior authorization (PA):

(a) An order for the initial prosthesis and/or related supplies which is signed and dated by the ordering prescribing practitioner must be kept on file by the prosthetist/supplier and submitted with request for PA;

(b) A separate prescribing practitioner order is not required for subsequent modifications, repairs or replacement of a facial prosthesis;

(c) A new prescribing practitioner order is required when different supplies are ordered;

(d) A photograph of the prosthesis and a photograph of the client without the prosthesis must be retained in the supplier’s record and must be submitted with the PA request;

(e) When code L8048 is used for a miscellaneous prosthesis or prosthetic component, the authorization request must be accompanied by a clear description and a drawing/copy of photograph of the item provided and the medical appropriateness;

(f) Requests for replacement, repair or modification of a facial prosthesis must include an explanation of the reason for the service;

(g) When replacement involves a new impression/moulage rather than use of a previous master model, the reason for the new impression/moulage must be clearly documented in the authorization request.

(3) Procedure Codes — Table 122-0680. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

ADMINISTRATIVE RULES

Hist.: HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; 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 44-2004, f. & cert. ef. 7-1-04

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 sub-atmospheric pressure to a wound using an electrical pump to intermittently or continuously convey sub-atmospheric 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 sub-atmospheric pressure at the wound site 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 — Non-blanchable 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) Exclusions from coverage — An NPWT pump and supplies are not covered when one or more of the following are present:

(a) The presence in the wound of necrotic tissue with eschar, if debridement is not attempted;

(b) Untreated osteomyelitis within the vicinity of the wound;

(c) Cancer present in the wound;

(d) The presence of a fistula to an organ or body cavity within the vicinity of the wound.

(4) Initial Coverage — A NPWT pump and supplies are covered for:

(a) Ulcers and wounds in the home or nursing facility when 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;

(b) 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.

(5) Continued Coverage — For consideration of continued coverage for negative pressure wound therapy (NPWT), a licensed medical professional must, on a regular basis:

(a) Directly assess the wound(s) being treated with the NPWT pump; and

(b) Supervise or directly perform the NPWT dressing changes;

(c) On at least a monthly basis, document changes in the ulcer's dimensions and characteristics.

(6) NPWT pump and supplies will be denied as not medically appropriate with any of the following, whichever occurs earliest:

(a) Criteria in section 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.

(7) NPWT Criterion:

(a) 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:

(A) Documentation in the client's medical record of evaluation, care, and wound measurements by a licensed medical professional; and

(B) Application of dressings to maintain a moist wound environment; and

(C) Debridement of necrotic tissue if present; and

(D) Evaluation of and provision for adequate nutritional status.

(b) 2 — For Stage III or IV pressure ulcers:

(A) The client has been appropriately turned and positioned; and

(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;

(C) The client's moisture and incontinence have been appropriately managed.

(c) 3 — For neuropathic (for example, diabetic) ulcers:

(A) The client has been on a comprehensive diabetic management program; and

(B) Reduction in pressure on a foot ulcer has been accomplished with appropriate modalities.

(d) 4 — For venous insufficiency ulcers:

(A) Compression bandages and/or garments have been consistently applied; and

(B) Leg elevation and ambulation have been encouraged.

(e) 5 — Preoperative myocutaneous flap or graft:

(A) Accelerated formation of granulation tissue which cannot be achieved by other available topical wound treatments;

(B) Other conditions of the client that will not allow for healing times achievable with other topical wound treatments.

(8) 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.

(9) 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; OMAP 44-2004, f. & cert. ef. 7-1-04

410-122-0720

Pediatric Wheelchairs

(1) Indications and Coverage:

(a) The purchase, rental, or modification of a pediatric wheelchair is covered when:

(A) The client's condition is such that without the use of a wheelchair the client would be bed-confined or confined to a non-mobile chair; and

(B) The client is not functionally ambulatory and the wheelchair is necessary to function within the home.

(b) The Office of Medical Assistance Programs (OMAP) will not pay for back-up chairs. Only one wheelchair will be maintained, rented,

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repaired, purchased or modified for each client to meet the medical appropriateness; however, if a client's current wheelchair no longer meets the medical appropriateness or repair to the wheelchair exceeds replacement cost, a new wheelchair may be authorized. If a client has a wheelchair that meets his/her medical needs regardless of who has obtained it, OMAP will not provide another chair;

(c) One month's rental of a wheelchair is covered if a client-owned wheelchair is being repaired;

(d) Living quarters must be able to accommodate the requested wheelchair. OMAP is not responsible for adapting living quarters;

(e) Backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, wheelchair gloves, and upgrades to allow performance of leisure or recreational activities are not covered;

(f) Do not use E1399 for manual wheelchair base;

(g) Reimbursement for wheelchair codes includes all labor charges involved in the assembly and delivery of the wheelchair and all adjustments for three months after date the client takes delivery. Reimbursement also includes emergency services, education and on-going assistance with use of the wheelchair for three months after the client takes delivery.

(2) Documentation:

(a) Documentation of medical appropriateness which has been reviewed and signed by the treating prescribing practitioner (for example, CMN) must be kept on file by the DME provider;

(b) Submit list of all DME available or being used to meet the client's needs when requesting prior authorization (PA);

(c) Submit Wheelchair and Seating Prescription and Justification form (OMAP 3125) or reasonable facsimile, with recommendations for most appropriate equipment. This must be submitted by physical therapist, occupational therapist, prescribing practitioner, or registered nurse, when requesting a PA. The evaluation must include client's functional ambulation status in their customary environment.

(3) Procedure Codes — Table 122-0720. [Table not included. See ED. NOTE.]

(4) Pediatric Tilt-in Space:

(a) Indications and coverage for tilt-in space: clients must meet the criteria for a wheelchair (manual or powered), plus the following:

(A) Dependent for transfers; and

(B) Spends a minimum of four hours a day continuously in a wheelchair; and

(C) Plan of care must address the need to change position at frequent intervals and not be left in the tilt position most of the time; and

(D) One of the following:

(i) High risk of skin breakdown;

(ii) Poor postural control, especially of the head and trunk;

(iii) Hyper/hypotonia;

(iv) Requires frequent change of position with poor upright sitting.

(b) Documentation must support the above criteria.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04

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**Department of Human Services,
Public Health
Chapter 333**

Adm. Order No.: PH 20-2004

Filed with Sec. of State: 6-18-2004

Certified to be Effective: 6-18-04

Notice Publication Date: 5-1-04

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 Repealed: 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), 333-061-0064(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)

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 amends 333-061-0225 and adopts 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 amends 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 amends 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).

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(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.

(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

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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:

(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.

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(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.

(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.

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(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.

(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 overlaying 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; PH 20-2004, f. & cert. ef. 6-18-04

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;

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(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; PH 20-2004, f. & cert. ef. 6-18-04

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.

(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(2)(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

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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.

(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.

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(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 y 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 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 require-

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ments, 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 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 doc-

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tor 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 broadcasting:

(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;
- (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 ≥ 3300 people may omit the electronic media public service announcement requirement prescribed in paragraph (B)(iv) of this subsection;

(ii) Systems serving ≥ 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 foregoing 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 ≥ 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; PH 20-2004, f. & cert. ef. 6-18-04

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;

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(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 (Qa) that allows for potential growth using one of the methods described below, whichever yields the smallest value for Qa:

(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 ≤ 500 and using a single well, the minimum acceptable delineation method is a calculated fixed radius. Parameters considered in this technique include Qa, 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 ≤ 500 with multiple wells, the WHPA(s) shall be delineated using a combination of an analytical technique and hydrogeologic mapping.

(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)(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; PH 20-2004, f. & cert. ef. 6-18-04

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

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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; PH 20-2004, f. & cert. ef. 6-18-04

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;

(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

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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; PH 20-2004, f. & cert. ef. 6-18-04

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

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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; PH 20-2004, f. & cert. ef. 6-18-04

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.

(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; PH 20-2004, f. & cert. ef. 6-18-04

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

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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;

(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; PH 20-2004, f. & cert. ef. 6-18-04

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; PH 20-2004, f. & cert. ef. 6-18-04

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.

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(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; PH 20-2004, f. & cert. ef. 6-18-04

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.

(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; PH 20-2004, f. & cert. ef. 6-18-04

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; PH 20-2004, f. & cert. ef. 6-18-04

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; PH 20-2004, f. & cert. ef. 6-18-04

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 responsible 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.

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(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; PH 20-2004, f. & cert. ef. 6-18-04

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 certification 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 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 19-1989(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; PH 20-2004, f. & cert. ef. 6-18-04

333-061-0225

General Requirements Applying to Water Systems

(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.: 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 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; PH 20-2004, f. & cert. ef. 6-18-04

333-061-0228

Certification Requirements for Small Groundwater System Operators

(1) An applicant for initial certification as an operator of a small groundwater system must meet one of the following requirements:

(a) Documentation of a high school diploma or Department approved equivalent; and completion of Department approved training on small groundwater system operation and water treatment processes, as applicable, and a passing score on a post training Department approved exam; or

(b) Passing a Department approved written examination covering basic small groundwater system operation and water treatment if appropriate; or

(c) Grandparenting as prescribed in section (4) below.

(2) A small groundwater system operator certificate shall expire on July 31st of every third year, except as provided in (4). Every certificate, except those issued under (1)(c), shall be renewed upon satisfactory evidence presented to the Department that the operator has completed 6 hours of Department approved continuing education since the issuance date of the last certificate.

ADMINISTRATIVE RULES

(3) The certificate of any small groundwater system operator who fails to renew and provide proof of the required continuing education shall expire and the operator shall not be in responsible charge of any small groundwater system.

(4) A person in responsible charge of a small groundwater system as of July 31, 2001, is eligible for certification as a small groundwater system operator for that water system by grandparenting under the following conditions:

(a) The person must have at least six months of experience at the system making the request;

(b) A system owner must request that a person or persons be grandparented for their system; and

(c) The system must be in substantial compliance with monitoring and reporting during the six months experience and up to and including the date of the grandparenting request;

(d) More than one person can be grandparented for a single system, or a person may be grandparented as an operator for more than one system only when those systems are under the same management but each must meet all of the criteria in subsections (4)(a), (b) and (c) of this rule;

(e) A grandparented small groundwater system operator certificate is valid only at the specific water system for a period of 3 years, is not transferable and is not renewable;

(f) The Department will only issue certificates under grandparenting provisions until July 31, 2002;

(g) If the classification of the water system changes, the grandparented certificate is no longer valid and the owner and operator shall comply with OAR 333-061-0225(2).

(5) Small groundwater system operators are exempt from OAR 333-061-0245.

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; PH 20-2004, f. & cert. ef. 6-18-04

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; PH 20-2004, f. & cert. ef. 6-18-04

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; PH 20-2004, f. & cert. ef. 6-18-04

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.]

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 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; PH 20-2004, f. & cert. ef. 6-18-04

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

ADMINISTRATIVE RULES

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

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; PH 20-2004, f. & cert. ef. 6-18-04

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; PH 20-2004, f. & cert. ef. 6-18-04

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.

ADMINISTRATIVE RULES

(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; PH 20-2004, f. & cert. ef. 6-18-04

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.

(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; PH 20-2004, f. & cert. ef. 6-18-04

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; PH 20-2004, f. & cert. ef. 6-18-04

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; PH 20-2004, f. & cert. ef. 6-18-04

Adm. Order No.: PH 21-2004

Filed with Sec. of State: 6-18-2004

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Rules Adopted: 333-175-0001, 333-175-0011, 333-175-0021, 333-175-0031, 333-175-0041, 333-175-0051, 333-175-0061, 333-175-0071, 333-175-0081, 333-175-0091, 333-175-0101, 333-175-0111

Rules Repealed: 333-175-0000, 333-175-0010, 333-175-0020, 333-175-0030

Subject: Adopts Food Handler Training Rules to clarify the requirements relating to program delivery, program content, and minimum standards for program completion and issuance of the certificate. These rules establish standards for providers of food handler training programs.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-175-0001

Purpose

The food handler training program rules set fees and address requirements for successful completion of a food handler training program and issuance of the certificate. Additionally, these rules set out general provisions regarding food handler training programs and provide guidelines for the relationship between the Department of Human Services, Local Public Health Authorities and Designated Agents.

Stat. Auth.: ORS 624

Stats. Implemented: ORS 624.570

Hist.: PH 21-2004, f. & cert. ef. 6-18-04

333-175-0011

Program Description — General

The goal of the food handler training program is to provide food handlers with a basic understanding of food safety, which will assist the manager or person in charge to direct the food handler in preparing and serving food safely. This is accomplished through training, testing and certification of food handlers.

Stat. Auth.: ORS 624

Stats. Implemented: ORS 624.570

Hist.: PH 21-2004, f. & cert. ef. 6-18-04

333-175-0021

Definitions

(1) "Approved" means approved by the Oregon Department of Human Services.

(2) "Computer-Based Training" means self-training through the use of a computer program or the Internet.

(3) "Designated Agent" means an individual or organization who/that has been authorized by the Department or Local Public Health Authority to provide a food handler training program and issue certificates of program completion.

(4) "Department" means the Oregon Department of Human Services.

(5) "Food Handler" means those persons involved in the preparation or service of food in a restaurant or food service facility licensed under ORS 624.020 or 624.320. This includes, but is not limited to, cooks, wait staff, dishwashers, bartenders and bus persons.

ADMINISTRATIVE RULES

(6) "Local Public Health Authority" means those counties to which the Department has entered into an Intergovernmental Agreement under ORS 624.510.

(7) "Program" means approved training provided by: self-training, computer-based training, or instructor-led training, and followed by testing and certification.

(8) "Program Provider" means the Department of Human Services, Local Public Health Authority or a Designated Agent.

(9) "Proctor" means the individual who administers and/or monitors the taking of the food handler exam.

(10) "Self-Training" means a training process wherein the individual learns without the presence or intervention of a trainer or instructor.

(11) "Trainer" means the person actively delivering food handler training to learners.

Stat. Auth.: ORS 624
Stats. Implemented: ORS 624.570
Hist.: PH 21-2004, f. & cert. ef. 6-18-04

333-175-0031

Food Handler Training

(1) All food handlers employed in a restaurant, bed and breakfast, mobile unit, commissary, warehouse or vending operation must obtain a certificate of program completion from the Department, Local Public Health Authority or a Designated Agent within 30 days after the date of hire. A food handler must maintain a current certificate of program completion as long as they are employed as a food handler.

(2) A food handler certificate of program completion expires three years after the date of issuance. When a food handler's certificate of program completion expires, the food handler must successfully complete the program and pay the appropriate fee.

(3) The Department and Local Public Health Authority may provide food handler training themselves, through a Designated Agent or both.

(4) At least one person involved in the preparation or service of food in a temporary restaurant who has a valid certificate of program completion must be present at all times during the operation of the facility.

(5) A facility listed in section (1) of this rule that is operated by a benevolent organization must have at least one person with a valid food handler certificate of program completion present at all times during the preparation and service of food. This person is responsible for supervising and educating all workers in the sanitary practices used in food service.

Stat. Auth.: ORS 624
Stats. Implemented: ORS 624.570
Hist.: PH 21-2004, f. & cert. ef. 6-18-04

333-175-0041

Minimum Standards for Program Providers

(1) In order for the Department or Local Public Health Authority to appoint an individual or organization as a Designated Agent, the individual or organization must demonstrate that they can satisfy the following requirements or standards:

(a) Individuals must have sufficient experience in food safety, food science or food service to be knowledgeable in all areas of the food handler training curriculum.

(b) Organizations must have a staff member with sufficient experience in food safety, food science or food service to be knowledgeable in all areas of the food handler training curriculum. This staff member must be reasonably involved in the operation or administration of the training program delivery.

(2) Individuals and organizations must also have:

(a) The ability to provide training and testing; and

(b) The ability to safeguard the training and testing materials.

(3) The Local Public Health Authority exercising duties pursuant to ORS 624.510 shall ensure that food handler training programs are provided within their jurisdiction. The Local Public Health Authority or Department who authorized a Designated Agent is responsible for the proper program administration and delivery.

Stat. Auth.: ORS 624.570
Stats. Implemented: ORS 624.570
Hist.: PH 21-2004, f. & cert. ef. 6-18-04

333-175-0051

Content of Food Handler Training Programs

The concept of foodborne illness will be introduced. The content of the training given will reinforce the notion that the behaviors addressed in the training content will help prevent foodborne illness.

(1) Personal Hygiene Learning Outcomes:

(a) Identify the following as the correct technique for handwashing:

(A) Warm water;

(B) Soap;

(C) Scrub hands thoroughly (approximately 15-20 seconds);

(D) Dry hands with single-use towel, cloth towel roll or air dryer.

(b) Sanitizer dips or hand sanitizers are not approved handwash techniques and are not acceptable substitutes to handwashing;

(c) Identify the following as situations when food handlers must wash their hands:

(A) After using the toilet and again when entering work area;

(B) After handling raw food;

(C) After smoking, eating, or drinking;

(D) After blowing nose, sneezing, coughing, or touching eyes, nose or mouth;

(E) After handling dirty dishes;

(F) After handling garbage;

(G) After cleaning or using other toxic materials;

(H) Before starting work;

(I) Before putting on gloves.

(d) Identify that fingernails must be trimmed short;

(e) Worker knows not to work when ill with diarrhea, vomiting, fever, jaundice or sore throat with fever;

(f) Worker knows to not handle food with an infected cut or burn;

(g) Worker knows that plastic gloves are capable of spreading germs and do not substitute for proper handwashing;

(h) Worker knows that smoking, eating, drinking, and chewing tobacco is prohibited in food preparation and food and utensil storage areas.

(2) Cross Contamination Learning Outcomes:

(a) Define and identify cross contamination;

(b) Identify the following methods to prevent cross contamination:

(A) Wash, rinse, and sanitize utensils, work surfaces and equipment between uses;

(B) Identify that slicers must be cleaned and sanitized when switching food to be sliced;

(C) Identify that the procedure for in-place cleaning is to wash with warm soapy water, rinse with clear water, wipe with (50-100 ppm chlorine residual) sanitizer.

(c) Identify that food service facilities do not reuse food from a customer's plate or table unless in unopened packages;

(d) Identify that workers must use clean utensils, instead of bare hands, for dispensing food, and store scoops with handle extended out of the food;

(e) Identify the following storage conditions that will minimize the potential for cross contamination:

(A) Store raw meats below and completely separate from ready-to-eat food in refrigeration units;

(B) Store food off the floor;

(C) Store chemicals, cleansers and pesticides completely separate from food, utensils, and single service items;

(D) Properly label all chemicals, cleansers and pesticides.

(f) Identify that in-use wiping cloths need to be stored in (50-100 ppm) sanitizer between uses;

(g) Correctly use test strips for checking sanitizer concentration.

(3) Final Cooking Temperature Learning Outcomes:

(a) Identify the following proper cooking (internal) temperatures:

(A) Poultry — 165 degrees F;

(B) Hamburger, or tenderized or pinned meats — 155 degrees F;

(C) Pork, fish, eggs, lamb and seafood — 145 degrees F;

(D) Beef roasts — 130 degrees F.

(b) Identify that cooking to recommended temperature kills disease-causing germs;

(c) Identify that heating doesn't affect the illness causing properties of toxins;

(d) Identify the following as proper equipment used for rapid heating and reheating:

(A) Stove;

(B) Microwave;

(C) Convection oven.

(4) Temperature Control Learning Outcomes:

(a) Identify the following types and uses of thermometers:

(A) Refrigerator thermometers;

(B) Probe (food) thermometers.

(b) Identify the proper technique for cleaning thermometers between uses is to wash, rinse and sanitize;

(c) Identify the proper technique for calibration of thermometers:

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(A) Pack a large cup to the top with crushed ice. Put the thermometer at least two inches into the water. After 30 seconds, read the dial. It should read 32 degrees F;

(B) If the dial does not read 32 degrees F, leave it in the ice water, use pliers or a wrench and turn the nut on the back of the thermometer until the needle reads 32 degrees F.

(d) Identify use of the probe thermometer when: cooking, cooling, reheating, hot holding and cold holding;

(e) Identify the following as the approved thawing methods:

(A) Refrigerator;

(B) Running cold water;

(C) Microwave when followed by immediate cooking.

(f) Identify that potentially hazardous food will support bacterial growth when held at temperatures between 41 degrees F and 140 degrees F:

(A) Identify 140 degrees F as the proper temperature for hot holding potentially hazardous food;

(B) Identify 41 degrees F as the proper temperature for cold holding;

(C) Identify proper ice level for cold holding is level with the food.

(g) Identify that proper cooling requires food to cool from 140 degrees F to 70 degrees F in 2 hours and 70 degrees F to 41 degrees F in four hours;

(h) Identify the following techniques for rapid cooling:

(A) Place food in an ice bath;

(B) Place small amounts of food into shallow pans and refrigerate;

(C) Stir food frequently and use ice wands.

(i) Identify 165 degrees F as the minimum temperature for reheating food and that food must reach this temperature within 2 hours.

Stat. Auth.: ORS 624

Stats. Implemented: ORS 624.570

Hist.: PH 21-2004, f. & cert. ef. 6-18-04

333-175-0061

Administration of Food Handler Training Program

(1) Program providers may provide the food handler training program through a trainer-led class and exam, self-training materials and exam or other method approved by the Department.

(2) The Department must provide or approve all food handler training program materials, including instructional delivery methods, materials and exam questions.

(3) Each food handler training exam must consist of 32 multiple-choice questions covering concepts stated in OAR 333-175-0051 or other means of examination approved in advance by the Department.

(4) When taking the examination, food handlers may refer to the training manual or printed text. Food handlers may also refer to handwritten notes developed onsite during training.

(5) Upon successful completion of the program, the food handler must be allowed to keep the food handler training manual.

(6) Program providers must retain for three years the food handler answer sheets, records and cards issued in accordance with the Archives Division Oregon Administrative Rule 166-300-0015.

(7) The proctor must verify the identity of the food handler taking the exam and receiving the certificate of program completion.

(8) Program providers will maintain a plan to access services for food workers with special needs. This plan shall be used to assist the food handler when the program provider has determined that an individual has ceased to make progress toward successfully completing the food handler exam. The plan to address workers with special needs shall allow the food worker the option to take the exam orally on specific job duties or to receive assistance in reading the test.

(9) A restricted certificate of program completion may be issued:

(a) The certificate must identify the specific duties that may be performed by this individual;

(b) Removal of the restrictions can be accomplished by successfully completing the food handler training program. The food handler will then be issued a new certificate of program completion.

(10) Program providers will provide to all food handlers who fail the examination specific feedback on questions missed.

(11) Program providers will ensure that a knowledgeable person is available to answer questions about the examination and program content. It is not necessary that the knowledgeable person be present at all times to answer questions.

(12) Program providers will rotate exam versions at least quarterly.

(13) Self-proctoring of the food handler exam is not allowed.

(14) At least triennially or when deemed necessary, the Department or Local Public Health Authority that approved the Designated Agent will perform an onsite review of the training programs. The review will examine:

(a) Exam security, including rotation of examination materials, physical security of exams, and compliance with availability of reference materials during testing;

(b) Instructor qualification and availability of qualified assistance for individuals with questions on the training materials.

(15) Annually, program providers will submit information to the Department on:

(a) The number of exams taken for the year, the number of exams passed, the average exam score, the exam versions being used, the number of certificates of program completion issued, training language and training format;

(b) A summary of the number of individuals who failed the initial examination, actions taken to retrain, and referrals to other sources of training.

(16) The Local Public Health Authority or the Department may verify that a food worker was certified by a program provider in any jurisdiction in Oregon.

(17) Failure to follow rules may result in the removal of the ability of a program provider to provide food worker training:

(a) Upon failure to follow rules, unless immediately correctable, the program provider will develop a remediation plan. The Local Public Health Authority or the Department that approved the training will follow up within 90 days to ensure that the program provider is in compliance with training requirements. The Local Public Health Authority or the Department may allow for additional time to achieve compliance with the training requirements;

(b) Continued failure to achieve compliance with the training requirements will result in the termination of the program provider's training approval.

(18) In addition to the requirements for the program provider, providers of Internet-based food handler certification must meet the following standards:

(a) Program providers must verify the identity of the examinee by requiring a login page to be completed, which captures data regarding both the examinee and the employer;

(b) Prior to taking the exam, either an online proctor login page must be completed or the program must contain an affidavit that can be printed which enables the proctor to certify the information in subsection (c) of this section;

(c) The proctor must certify on the login page or affidavit that:

(A) The proctor must be at least age 18 and must reside in Oregon;

(B) The proctor must be present during the exam;

(C) The proctor must verify the integrity and security of the exam;

(D) The proctor must verify the identity of the person taking the exam.

(d) If an affidavit is used, it must be mailed or faxed to the program provider and must be received and reviewed before the food handler certification of program completion is issued.

(e) If a login page is used, the program provider must review the information on the proctor login page before the certificate of program completion is issued.

Stat. Auth.: ORS 624

Stats. Implemented: ORS 624.570

Hist.: PH 21-2004, f. & cert. ef. 6-18-04

333-175-0071

Requirements for Food Handler Training Program Qualifications

(1) Any trainer providing food handler training or related training must either be a Registered Environmental Health Specialist, Registered Environmental Health Specialist Trainee or have a current certificate of completion from an approved food manager training course. The program provider may also approve other trainers based upon their experience, training, education or credentials.

(2) Trainer requirements do not apply when food handlers are trained using self-training materials.

Stat. Auth.: ORS 624

Stats. Implemented: ORS 624.570

Hist.: PH 21-2004, f. & cert. ef. 6-18-04

333-175-0081

Successful Completion of Food Handler Training Program

(1) In order to receive a certificate of program completion, a food handler must pass the exam with a minimum score of 75% or at least 24 correct answers out of 32 questions.

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(2) If a person successfully completes a food handler training program and pays the appropriate fee, the program provider shall issue a certificate of program completion.

Stat. Auth.: ORS 624
Stats. Implemented: ORS 624.570
Hist.: PH 21-2004, f. & cert. ef. 6-18-04

333-175-0091

Reciprocity

(1) A food handler certificate of program completion is valid statewide.

(2) Any person who has a current certification from a Department-approved food manager training program need not obtain a food handler certificate of program completion.

(3) To be accepted in lieu of a food handler certificate of program completion, a food manager certification must be renewed every five years.

Stat. Auth.: ORS 624
Stats. Implemented: ORS 624.570
Hist.: PH 21-2004, f. & cert. ef. 6-18-04

333-175-0101

Fees

(1) Program providers may charge a fee up to a maximum of \$10 per person for the administration of the program and the issuance of a certificate of program completion.

(2) Program providers shall not charge a fee to any food handler listed in OAR 333-175-0091.

(3) Program providers may charge a fee for food handler materials and deduct the cost from the food handler training and certificate of program completion as long as the total cost does not exceed \$10 to each individual.

(4) Notwithstanding sections (1) and (3) of this rule, program providers may assess a new program fee each time a participant takes or retakes all or part of a program or certification exam.

(5) Program providers may charge a fee not to exceed \$5 for duplicate certificates of program completion.

Stat. Auth.: ORS 624
Stats. Implemented: ORS 624.570
Hist.: PH 21-2004, f. & cert. ef. 6-18-04

333-175-0111

General

(1) Upon request by the Department or a Local Public Health Authority, a licensee of a facility licensed under ORS 624.020 or 624.320 shall make available the certificate of program completion for each food handler in the licensed facility. For purposes of complying with this rule, the licensee may keep photocopies of the food handler certificates of program completion.

(2) If a food handler uses their food manager training program certification in lieu of a food handler certificate of program completion, the licensee shall make available to the inspecting authority the food handler's food manager training certification.

(3) Consistent with civil rights and disability laws, all program providers will make reasonable accommodations for training workers with disabilities, including the issuing of restricted certificates of program completion, and providing culturally, developmentally, and linguistically appropriate training.

(4) The Local Public Health Authority that approves a Designated Agent must provide the Department with the name, address and telephone number of the individual or organization that has been approved. Such notification must be in writing and must occur before the Designated Agent can commence training and/or certification of food workers.

Stat. Auth.: ORS 624
Stats. Implemented: ORS 624.570
Hist.: PH 21-2004, f. & cert. ef. 6-18-04

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Adm. Order No.: PH 22-2004

Filed with Sec. of State: 6-25-2004

Certified to be Effective: 6-25-04

Notice Publication Date: 5-1-04

Rules Adopted: 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

Rules Amended: 333-536-0010, 333-536-0050

Rules Repealed: 333-536-0000(T), 333-536-0005(T), 333-536-0010(T), 333-536-0015(T), 333-536-0020(T), 333-536-0025(T), 333-536-0030(T), 333-536-0035(T), 333-536-0040(T), 333-536-0045(T), 333-536-0050(T), 333-536-0055(T), 333-536-0060(T), 333-536-0065(T), 333-536-0070(T), 333-536-0075(T), 333-536-0080(T), 333-536-0085(T), 333-536-0090(T), 333-536-0095(T), 333-536-0100(T)

Subject: 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, 333-536-0100 to correct an untimely filing error. These rules establish standards for licensure of In-Home Care Agencies and were previously submitted to the Secretary of State's office and became effective on February 1, 2003. These rules are identical to the rules previously filed with the Secretary of State's office on February 1, 2003.

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—(503) 731-4405

333-536-0000

Purpose

The purpose of these rules is to establish standards for licensure of In-Home Care Agencies.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0005

Definitions

As used in 333-536-0000 through 333-536-0095, the following definitions apply:

(1) Abuse.

(a) "Abuse" of persons defined as disabled and elderly by Oregon Revised Statute (ORS) 124.005(2) and ORS 124.005(3) means actions defined as abuse in ORS 124.005(1).

(b) "Abuse" of persons who are 18 years of age or older, mentally ill or developmentally disabled, and receive services from a community program or facility means actions defined as abuse in ORS 430.735(1).

(c) "Abuse" of a child as defined by ORS 419B.005(2) means actions defined as abuse in ORS 419B.005(1).

(2) "Activities of Daily Living" means those self-care activities which must be accomplished by an individual to meet his or her daily needs.

(3) "Agency" means In-Home Care Agency.

(4) "Authentication" means verification by the author that an entry in the client record is genuine.

(5) "Branch office" means a location or site from which an in-home care agency provides services within a portion of the total geographic area served by the parent agency. The site of the branch office generally does not exceed one hour of travel time from the parent agency. The branch office is part of the in-home care agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch to independently meet the requirements of an in-home care agency.

(6) "Caregiver" means a person providing assistance with activities of daily living or assistance with personal care tasks, household and supportive services, or medication services as authorized by these rules.

(7) "Client Representative" means:

(a) A parent, stepparent, foster parent, or other adult with primary caregiving responsibility for the client when the client is a child; or

(b) An individual, paid or unpaid, related or unrelated, who acts on behalf of, or cares for the client when the client is an adult.

(8) "Department" means the Department of Human Services.

(9) "Governing Body" means the owner or designee legally responsible for the direction and control of the operation of the in-home care agency.

(10) "Home health agency" means a public or private agency which provides coordinated home health services on a home visiting basis. Home

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health agencies provide skilled nursing services and at least one of the following therapeutic services:

- (a) Physical therapy;
- (b) Occupational therapy;
- (c) Speech therapy;
- (d) Home health aide services.

(11) "In-home care agency" means an agency primarily engaged in providing in-home care services for compensation to an individual in that individual's place of residence. "In-home care agency" does not include a home health agency or portion of an agency providing home health services as defined in ORS 443.005.

(12) "In-home care services" means personal care services furnished by an in-home care agency, or an individual under an arrangement or contract with an in-home care agency, that are necessary to assist an individual in meeting the individual's daily needs, but do not include curative or rehabilitative services.

(13) "Licensed" means that the person or agency to whom the term applies is currently licensed, certified, or registered by the proper authority within the State of Oregon.

(14) "Parent agency" means the in-home care agency that develops and maintains administrative controls of subunits or branch offices.

(15) "Personal care services" means the provision of or assistance with tasks intended to supplement a client's own personal abilities which are necessary to accomplish the client's activities of daily living and other activities as described in Oregon Administrative Rule (OAR) 333-536-0045(1), and are preventive and maintaining in nature.

(16) "Registered Nurse"(RN) means a person licensed under ORS Chapter 678.

(17) "Schedule caregivers" means to plan appointments for caregivers to deliver specific in-home care services to clients; the times and dates of these appointments are set by the in-home care agency.

(18) "Skilled nursing services" means the patient care services pertaining to the curative, rehabilitative, and/or preventive aspects of nursing performed by, or under the supervision of, a registered nurse pursuant to the plan of treatment established by a physician or nurse practitioner.

(19) "Stable and predictable condition" means a situation where the client's clinical and behavioral state is known, not characterized by rapid changes, and does not require continuous reassessment and evaluation.

(20) "Subunit" means an in-home care agency that provides for a parent agency in a geographic area different from that of the parent agency and generally exceeding one hour of travel time from the location of the parent agency.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0010 Licensure

(1) An agency that establishes, conducts, or represents itself to the public as providing in-home care services must be licensed by the Department and must comply with ORS 443.305 through 443.350 and these rules. The provisions of ORS 443.305 through 443.350 do not apply to organizations licensed, registered or certified under ORS 101.030, 410.495, 443.410, 443.485, 443.725, 443.860, or 443.886. The provisions of ORS 443.305 through 443.350 do not apply to independent individuals, volunteers, family, neighbors, or to agencies offering only housekeeping or on-call staffing for facilities, or to support services provided and funded by the Department of Human Services. Entities that provide referral or matching services that link In-Home Care services with clients are not required to be licensed under these rules, unless they do one or more of the following:

- (a) Schedule caregivers (as defined in OAR 333-536-0005(17));
- (b) Assign work;
- (c) Assign compensation rates;
- (d) Define working conditions.

(2) Application for a license to operate an in-home care agency shall be in writing on a form provided by the Department including demographic, ownership, and administrative information. The form shall specify such information required by the Department.

(3) If any of the information delineated in the agency's most recent application changes at a time other than the annual renewal date, the agency shall notify the Department in writing within 30 days of the change.

(4) No entity shall provide in-home care services, or use the term "in-home care agency" in its advertising, publicity, or any other form of communication unless licensed as an in-home care agency in accordance with the provisions herein.

(5) An agency that submits a completed application for licensure must demonstrate to the Department substantial compliance with these administrative rules through the survey process.

(6) The Department may reissue an agency license that has been suspended or revoked after the Department determines that compliance with these rules has been achieved.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0015 Initial Licensure

(1) Upon receipt of a completed initial application and the required fee, the Department may conduct a survey of the agency or any subunit(s) to determine if the agency or subunit is in compliance with these rules, and has the intent to provide in-home care services. If an agency or subunit is in compliance and intends to provide in-home care services to individuals, a license may be issued for the operation of the agency or subunit.

(2) During the first year of the Department's operation of the licensure program:

(a) An established in-home care agency requesting initial licensure shall submit:

- (A) An initial license application;
- (B) A completed self-assessment form;
- (C) The required fee; and
- (D) Any other information required by the Department.

(b) Upon satisfactory review of the above, the Department may waive the initial onsite survey and, if so, shall issue a one-time provisional license for a maximum of one year.

(3) Each license shall be issued only for the agency or subunit named in the application and shall not be transferable or assignable. If the ownership of the agency or subunit changes, the new owner shall apply for a license.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0020 Licensure Fees

(1) The fee for an initial in-home care agency license shall be \$500. If the agency has subunits, the fee for an initial license shall be \$500 for the parent agency, plus an additional \$500 for each subunit of the parent agency.

(2) The fee for a renewed in-home care agency license shall be \$350. If the agency has subunits, the fee for a renewed license shall be \$350 for the parent agency, plus an additional \$350 for each subunit of the parent agency.

(3) If the ownership of an agency changes other than at the time of the annual renewal, the new owner's agency licensure fee shall be \$350. If the new owner's agency has one or more subunits, this fee shall be \$350 for the parent agency, plus an additional \$350 for each subunit. Licenses are not transferable.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0025 Expiration and Renewal of License

Each license to operate an in-home care agency shall expire twelve months from the date of issue. If renewal is desired, the licensee shall make application at least 30 days prior to the expiration date upon a form prescribed by the Department.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0030 Denial, Suspension, or Revocation of License

(1) A license for an in-home care agency may be denied, suspended or revoked by the Department when the Department finds that there has been a failure to comply with ORS 443.305 through 443.350 or with OAR 333-536-0000 through 333-536-0095.

(2) A license for an in-home care agency may be denied, suspended, or revoked by the Department if a person or persons who own or manage

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the in-home care agency permit(s), aid(s), or abet(s) any illegal act affecting the welfare of the client.

(3) Action under this section, including hearing rights, shall be taken in accordance with ORS 183.310 through 183.550.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0035

Return of Agency License

Each license certificate in the licensee's possession shall be returned to the Department immediately upon the suspension or revocation of the license, failure to renew the license by the date of expiration, or if operation is discontinued by the voluntary action of the licensee.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0040

Department Procedures

Complaint Investigations and Inspections:

(1) Complaint Investigations:

(a) Any person may make a complaint to the Department regarding violations of in-home care agency laws or regulations. An unannounced complaint investigation will be carried out as soon as practicable and may include, but not be limited to: Interview of the complainant, client(s), witnesses, and agency management and staff; observations of the client(s), staff performance, client environment; and review of documents and records.

(b) Copies of all complaint investigation reports and statements of deficiencies, which are not exempt from disclosure, will be available from the Department provided that the identity of any complainant or client referred to in an investigation will not be disclosed without legal authorization.

(2) Abuse and Protective Services Investigations:

(a) The in-home care agency shall cooperate with investigations of allegations of client abuse and protective service activities conducted by, or according to procedures established by, the Department.

(3) Inspections:

(a) The Department may, in addition to any inspections conducted pursuant to complaint investigations, conduct at least one unannounced general inspection of each in-home care agency during each calendar year and at such other times as the Department deems necessary to determine compliance with these rules.

(b) Inspections may include but not be limited to those procedures stated in subsection (1)(a) of this rule.

(c) When documents and records are requested under section (1) or (2) of this rule, the agency shall make the requested materials available to the investigator for review and copying.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0045

Services Provided

(1) The services provided by the agency must include the safe provision of, or assistance with, personal care tasks related to one or more of the following:

- (a) Bathing;
- (b) Personal grooming and hygiene;
- (c) Dressing;
- (d) Toileting and elimination;
- (e) Mobility and movement; and
- (f) Nutrition/hydration and feeding.

(2) The agency may also provide one or more of the following services at the request of the client or the client's representative:

(a) Medication services, in accordance with OAR 333-536-0075, which includes:

(A) Assistance with self-administration of non-injectable medication;

or

- (B) Medication administration; or
- (C) Medication management.

(b) Nursing services. For clients whose conditions are stable and predictable, the agency may provide nursing assessment, monitoring, and nursing care including assignment and delegation in accordance with

Oregon State Board of Nursing administrative rules. These services are not rehabilitative and curative, but are maintenance services.

(3) In-home care agencies may also provide housekeeping and other supportive services. Such tasks include, but are not limited to:

- (a) Housekeeping tasks;
- (b) Laundry tasks;
- (c) Shopping and errands;
- (d) Transportation; and

(e) Arranging for medical appointments. In-home care agencies with clients receiving only housekeeping and supportive services are not subject to the requirements for the provision of personal care services. If the agency has clients who receive only housekeeping and support services, the agency is not required to comply with any of the requirements of these OARs for those specific/particular clients.

(4) Services described in this section shall be primarily provided at the client's residence. In addition, the services may be rendered at nonresidence locations as specified in the client's service plan.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0050

Organization, Administration, and Personnel

(1) An agency shall clearly set forth in writing the organization, services provided, administrative control, and lines of authority and responsibility from the owner to the client-care level.

(a) An agency shall not assign administrative and supervisory functions to another agency or organization.

(b) The agency shall control and be responsible for all services provided, including those provided through contractual agreements between the agency and caregivers or licensed nurses.

(2) Geographic service area:

(a) The agency shall identify in writing the geographic area in which it generally intends to provide services.

(b) The geographic service area shall be within a distance from the parent agency which ensures appropriate and timely delivery and supervision of services.

(3) If the agency operates a branch office:

(a) The branch office shall be located within the parent agency's geographic service area at a distance from the parent agency which generally does not exceed one hour's travel time.

(b) The branch office shall be operated under the management and supervision of the parent agency. Administrative and personnel functions must be retained at the parent agency. The branch office must not function as an independent agency.

(c) Services must not be provided from the branch office until the branch office has been added to the license of the parent agency in accordance with Department procedures.

(4) If the agency provides services from an office located outside of the parent agency's geographic service area, that office will constitute a subunit of the agency. If the agency has subunits:

(a) The subunit shall have its own staff, separate from parent agency staff, and shall operate independently of the parent agency.

(b) The subunit shall independently meet all licensing requirements, be separately licensed from the parent agency, and pay a separate licensure fee.

(5) An agency's owner or designee shall:

(a) Assume full legal, financial, and overall responsibility for the agency's operation; and

(b) Serve as, or employ, a qualified manager.

(6) The manager hired on or after the effective date of these rules shall meet the following qualifications:

(a) Possess a high school diploma or equivalent; and

(b) Have at least two years of professional or management experience in a health-related field or program.

(7) The manager or designee shall be accessible and available during all hours in which services are being provided to clients. The manager shall designate, in writing, a qualified individual to act as manager in his or her absence.

(8) The manager or designee shall be responsible for:

(a) Organizing and directing the agency's ongoing functions;

(b) Developing and implementing written and current policies and procedures necessary to direct the administrative, personnel, and client care operations of the agency, including but not limited to the requirements in these rules;

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(c) Ensuring the completeness and accuracy of all information provided to the public regarding the agency and its services;

(d) Ensuring the provision of safe and appropriate services in accordance with written service plans;

(e) Ensuring that all individuals providing services for the agency meet the qualification, orientation, competency, training, and education requirements in the rules;

(f) Ensuring that personnel and client care practices are consistent with the agency's written policies and procedures.

(g) Ensuring that client care assignments are based on the caregiver's abilities, skills, and competence;

(h) Ensuring that agency does not accept or retain clients for whom it does not have the capabilities or resources to provide services;

(i) Ensuring the timely internal investigation of complaints, grievances, accidents, incidents, medication or treatment errors, and allegations of abuse or neglect involving individuals providing services for the agency. The agency shall maintain in its records documentation of the complaint or event, the investigation, the results, and actions taken;

(j) Ensuring the timely reporting of allegations of abuse or neglect to the appropriate authority which includes but is not limited to Department or local law enforcement agency.

(9) Personnel records for all caregiver and nursing staff, both employees and contracted staff, shall include at a minimum the following:

(a) Evidence of pre-employment screening;

(b) Evidence that the in-home care agency ensures that a criminal background check has been conducted on all individuals employed by or contracting with the agency as in-home caregivers.

(A) The in-home care agency must insure that a criminal background check has been conducted on all new employees hired after the effective date of these rules.

(B) The in-home care agency must insure that a criminal background check has been conducted on all current employees within six months of the effective date of these rules. If the screening indicates that the employee has been convicted for crimes against an individual or property, the agency shall make a determination of the employee's fitness to provide care to clients.

(c) Evidence that all position qualifications have been met, including required licensure;

(d) Current position job description(s) signed by the individual(s);

(e) Evidence of orientation, training, competency, and ongoing education;

(f) Evidence of annual performance evaluations;

(g) Evidence of compliance with agency employee health policies.

(h) Evidence of a current Driver's License with current auto insurance for each individual whose duties include transporting clients in motor vehicles; and

(i) Current signed contract(s), if applicable, as specified in paragraph (10) of these rules.

(10) An agency contracting with individuals, or with another agency or organization, to provide personal care services to its clients shall enter into a written contract with each party under which services to the agency clients are provided. The written contract shall clearly stipulate:

(a) The services to be provided by the contractor;

(b) That the clients are the clients of the agency and not the contractor;

(c) The requirement that the contractor conform to all of the agency's client care and personnel policies; and

(d) The terms of the agreement and basis for renewal or termination.

(11) The agency shall comply with all applicable state and local laws, statutes, rules, and ordinances.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0055

Disclosure, Screening, and Acceptance of Clients

(1) When an individual is accepted for agency service, a written disclosure statement shall be signed by the potential client or the client's representative and a copy shall be incorporated into the client record.

(2) All existing clients of the agency at the time of initial licensure must receive the disclosure statement within thirty (30) days of initial licensure of the agency.

(3) The disclosure statement must include the following:

(a) A description of the services offered by the agency according to OAR 333-536-0045, including the extent of registered nurse involvement

in the agency's operations and whether nursing services as described in OAR 333-536-0080 are provided.

(b) If the agency provides medication services as described in OAR 333-536-0075, the qualifications of the individual(s) providing oversight of the agency's medication administration systems and the medication training and demonstration.

(c) A clear statement indicating that it is not within the scope of the agency's license to manage the medical and health conditions of clients should they become unstable or unpredictable.

(d) The qualifications and training requirements determined by the agency for individuals providing direct client care.

(e) The charges for the services provided by the agency.

(f) A description of how the service plans are developed and reviewed and the relationship between the service plans and the cost of services.

(g) A description of billing methods, payment systems, and due dates.

(h) The policy for client notification of increases in the costs of services.

(i) The agency's refund policy.

(j) Criteria, circumstances, or conditions which may result in termination of services by the agency and client notification of such.

(k) Procedures for contacting the agency manager or designee during all of the hours during which services are provided.

(l) Clients' Bill of Rights including:

(A) Procedures for filing a grievance or complaint with the agency; and

(B) Procedures for filing a grievance or complaint with the Department, along with the telephone number and business hours of the Department.

(m) Notice that the Department has the authority to examine clients' records as part of the Department's regulation and evaluation of the agency.

(4) The agency manager or designee shall conduct an initial screening to evaluate a prospective client's service requests and needs prior to accepting the individual for service. The extent of the screening shall be sufficient to determine the ability of the agency to meet those requests and needs based on the agency's overall service capability. The screening shall be documented, and dated and signed by the individual who conducted it.

(5) The agency shall only accept or retain individuals for services for whom it can ensure the following:

(a) The agency has the capability to meet the in-home care needs of the individual;

(b) The agency employs or contracts with a sufficient number of trained and competent staff and has adequate resources to provide the requested or needed services; and

(c) The agency is able to coordinate its services with the care and services provided by other organizations and individuals.

(6) The agency shall notify the client, or the client's representative, of the need for a referral for medical or health services if the client's medical or health condition becomes unstable or unpredictable. The agency may continue to provide in-home care services in the client's residence, but must not manage, or represent itself as able to manage, the client's unstable or unpredictable medical or health condition.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0060

Clients' Rights

(1) The manager shall ensure that the agency recognizes and protects the following rights of each client:

(a) The right to be treated with dignity and respect;

(b) The right to be free from theft, damage, or misuse of one's personal property;

(c) The right to be given the informed choice and opportunity to select or refuse service and to accept responsibility for the consequences;

(d) The right to be free from neglect of care, verbal, mental, emotional, physical, and sexual abuse;

(e) The right to be free from financial exploitation;

(f) The right to be free from physical and chemical restraints;

(g) The right to voice grievances or complaints regarding services or any other issue without discrimination or reprisal for exercising such rights;

(h) The right to be free from discrimination in regard to race, color, national origin, gender, sexual orientation, or religion.

(i) The right to participate in planning of the services and care to be furnished, any changes in the services and care, the frequency of visits, and cessation of services;

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(j) The right to have access to his or her client record;
(k) The right to have client information and records confidentially maintained by the agency;

(l) The right to be advised in writing, before care is initiated, of the charges for the services to be furnished, and the amount of payment that will be required from the client;

(m) The right to a written 30-day notice of termination of services by the agency that specifies the reason(s) for the termination with the following exceptions:

(A) The right to immediate oral or written notice of termination of services by the agency at the time the agency determines that the safety of its staff or the client cannot be ensured. If oral notice is given, the agency must also subsequently provide the client a written confirmation of the oral notice of termination of services.

(B) The right to a written 48-hour notice of termination of services by the agency in the event of non-payment in accordance with the agency's disclosed payment requirements.

(2) The agency shall provide each client with a written notice of the client's rights, as specified in paragraph (1) of this section, prior to furnishing care to the client. Evidence that each client has received this notice shall be maintained in the client's agency record.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0065

Service Plan

For clients receiving services described in 333-536-0045(1) and (2), the services provided shall be in accordance with a written service plan developed in conjunction with client or the client's representative based on the client's or the client's representative's request and an evaluation of the client's physical, mental, and emotional needs. The service plan must be consistent with the agency's capabilities.

(1) The agency manager or designee shall conduct an initial evaluation of the client. The evaluation must be documented, dated, and signed by the individual who conducted the evaluation, and maintained in the client's agency record.

(2) The agency manager or designee, in conjunction with the client or the client's representative, shall complete a written service plan within seven (7) days after the initiation of services. The agency representative shall ensure that the service plan includes a list of individuals participating in development of the plan. The agency representative shall also sign and date the service plan when it is complete and acceptable to all individuals participating in development of the plan.

(3) The completed service plan shall include at least the following:

(a) The schedule for the provision of services, specifying days and times;

(b) The services to be provided, specifying the tasks to be conducted;

(c) Identification of the professional discipline of individuals who will provide the services;

(d) Pertinent information about the client's needs in relation to the services to be provided to ensure the provision of safe and appropriate care; and

(e) When medication services or nursing services are provided as allowed under these rules, information set forth in OAR 333-536-0075 and 333-536-0080.

(4) The client or the client's representative may request changes in the service plan as the client's needs change. All changes must be in writing and must be signed and dated by the individual making the change.

(5) The service plan, including changes when made, shall be followed as written.

(6) The agency shall maintain the original service plan and all updated service plans in each client's agency record. Complete and legible copies of the service plan shall be given to the client or client's representative.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0070

Caregiver Qualifications and Requirements

The personal care provided by the agency shall be rendered by qualified and trained employees or contracted caregivers under the supervision of the manager or designee. The services shall be provided as requested by the client or client's representatives in accordance with these rules and the service plan.

(1) The manager shall ensure that the agency has qualified and trained employees or contracted caregivers sufficient in number to meet the needs of the clients receiving services.

(2) Caregivers must be at least 18 years of age and shall have sufficient communication and language skills to enable them to perform their duties and interact effectively with clients and other agency staff.

(3) Caregivers shall complete an agency-specific orientation, conducted by the agency manager or designee, before independently providing services to clients.

(a) The orientation shall include, but not be limited to, the following subject areas:

(A) Caregivers' duties and responsibilities;

(B) Clients' rights;

(C) Ethics, including confidentiality of client information;

(D) The agency's infection control policies;

(E) A description of the services provided by the agency;

(F) Assignment and supervision of services;

(G) Documentation of client needs and services provided;

(H) The agency's policies related to medical and non-medical emergency response;

(I) The roles of, and coordination with, other community service providers; and

(J) Other appropriate subject matter based on the needs of the special populations served by the agency.

(b) The content of the orientation, the date(s) and length, and the name(s) and signature(s) of the instructor(s) shall be clearly documented for each caregiver and maintained in personnel records.

(4) Caregivers shall complete appropriate training before independently providing services to clients.

(a) Caregiver training shall be based on the services provided by the in-home care agency, including, as applicable, the following topics:

(A) Caregivers' duties and responsibilities;

(B) Recognizing and responding to medical emergencies;

(C) Dealing with adverse behaviors;

(D) Nutrition and hydration, including special diets and meal preparation and service;

(E) Appropriate and safe techniques in personal care tasks;

(F) Methods and techniques to prevent skin breakdown, contractures, and falls;

(G) Handwashing and infection control;

(H) Body mechanics;

(I) Maintenance of a clean and safe environment;

(J) Fire safety and non-medical emergency procedures; and

(K) Assisting clients with self-directed or client's representative-directed non-injectable medication administration.

(b) The content of the training, the date(s) and length, and name(s) and signature(s) of the instructor(s) shall be clearly documented for each caregiver and maintained in personnel records.

(c) Caregivers with proof of current or previous Oregon health-care related licensure or certification are exempt from in-home caregiver training.

(d) Caregivers moving from one office to another in the same in-home care agency are not subject to additional training requirements, provided previous training is documented.

(e) Caregivers who have completed training previously, and have documentation of that training, shall have their competency evaluated by an agency representative, and any potential training may be limited to areas requiring improvement after the evaluation.

(f) Documentation of training and competency evaluations shall be included in the caregiver's personnel record.

(5) Caregiver Selection and Review of Service Plan.

(a) The skills of the caregiver must be matched with the care needs of the client. The manager or designee must assign caregivers to specific clients based on the care needs of the clients and the skills of the caregivers. The caregivers must receive additional training as appropriate to meet the individual needs of assigned clients.

(b) The client's service plan must be reviewed with each caregiver before the initial delivery of client care. The date of the review(s), the signature of the agency supervisor or designee and the list of assigned caregivers must be documented.

(c) The updated client's service plan must be reviewed with each caregiver when changes to the plan are made. The date of the review(s), the signature of the agency supervisor or designee and the list of assigned caregivers must be documented.

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(d) Caregivers must provide services to clients in accordance with the service plans.

(6) Caregiver supervision.

(a) The manager or designee must conduct supervisory visits to the client's residence:

(A) Within two weeks of the initiation of the services while a caregiver is providing services, and

(B) Quarterly monitoring thereafter.

(b) Each supervisory visit must be documented, dated, and signed, and shall consist of an evaluation of:

(A) Whether appropriate and safe techniques have been used in the provision of care;

(B) Whether the service plan has been followed as written;

(C) Whether the service plan is meeting the client's needs;

(D) Whether the caregiver has received sufficient training for this client; and

(E) Whether appropriate follow-up of any service or service plan issues or problems identified as a result of the supervisory visit will be necessary.

(c) If services are provided in a non-residential setting in accordance with the service plan, supervisory visits which conform to the requirements in paragraphs (a) and (b) of this section must also be conducted at the non-residential location.

(7) Caregivers shall receive a minimum of 6 hours of education related to caregiver duties annually.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0075

Medication Services

If the agency provides non-injectable medication services as described in OAR 333-536-0045(2)(a), the services shall be rendered persons who meet the requirements of (8) of this rule. The services shall be provided as requested by the client or client's representatives in accordance with these rules, accepted standards of medication practice, and the service plan.

(1) Medication assistance is defined as:

(a) Self-administration of non-injectable medication which the client fully self-directs but is not physically able to perform. Prescription medications must be administered from the original container in accordance with the instructions on the original container or the physician's order. This also includes reminders to patients to take their medications.

(b) Medication Assistance is not subject to the requirements of 333-536-0075(2)-(8).

(2) If the agency provides medication administration or medication set-up, the services shall be rendered by qualified and trained employees or contracted caregivers. The services shall be provided as requested by the clients or client's representative in accordance with these rules, accepted standards of medication practice and the service plan.

(a) Medication administration occurs when agency staff administers medications to a client or directly supervises the client who is not able to self-direct, but may be physically able to perform the tasks.

(b) Medication set up occurs when agency staff set up the client's medications in advance from original containers into closed secondary containers designed and manufactured for this purpose. Agency staff may set up medications for up to thirty days in advance.

(3) The agency manager shall be responsible to develop and implement safe and appropriate medication administration delivery systems which ensure that every client receives the right medication, in the right amount, by the right route, and at the right time.

(a) The agency's medication practices must be consistent with the agency's current written policies and procedures which include, but are not limited to:

(A) Provisions to ensure that prescribed changes in each client's medication regimen are documented and implemented;

(B) Provisions to ensure that the caregivers are informed about the potential adverse reactions, side effects, drug-to-drug interactions and food-to-drug interactions, and contraindications associated with each client's medication regimen;

(C) Provisions to ensure that the caregivers promptly report problems or discrepancies related to each client's medication regimen to the caregivers' supervisor.

(4) The client's service plan must specify the medication tasks to be performed, and complete medication instructions that include the name of

each medication, the dosage to be administered, the route of administration, the frequency of administration, and any special instructions necessary for safe and appropriate administration.

(5) Packaging and labeling:

(a) Prescription medications shall be in the original pharmacy containers and clearly labeled with the pharmacists' labels.

(b) Samples of medications received from the physician or practitioner shall be in the original containers and have the original manufacturers' labels.

(c) Over-the-counter medications shall be in the original containers and have the original manufacturers' labels.

(d) Secondary containers must be labeled with the client's name, the date and time of the set-up, and the name of the agency staff person who filled the container. Secondary container compartments must be labeled with the specific time the medications in that compartment are to be administered.

(6) The provision of medication tasks as described in this section shall be documented by the individuals performing the tasks. The documentation shall include the tasks completed, the date and signature of the individual(s) performing the task(s), and shall be maintained in the client's agency record.

(7) Visits by a registered nurse to provide periodic observation and inspection shall be conducted at least every 90 days.

(8) Agency caregivers assigned to provide medication services must be given basic non-injectable medication training before providing the services. The medication training must include successful return demonstrations of non-injectable medications tasks by the caregivers.

(a) The medication training shall include at least the following areas:

(A) Medication abbreviations;

(B) Reading medication orders and directions;

(C) Reading medication labels and packages;

(D) Setting up medication labels and packages;

(E) Administering non-injectable medications:

(i) Pill forms, including identification of pills which cannot be crushed;

(ii) Non-injectable liquid forms, including those administered by syringe or dropper and eye and ear drops;

(iii) Suppository forms; and

(iv) Topical forms.

(F) Identifying and reporting adverse medication reactions, interactions, contraindications and side effects; and

(G) Infection control and safety related to medication administration.

(b) Prior to providing medication services, the caregivers shall demonstrate appropriate and safe techniques in the provision of medication tasks described in this section.

(c) The content of the medication training, the dates and length of training, the identity of the instructor, evidence of successful return demonstrations, and the instructor's statement that the caregiver has been evaluated to be competent to provide the medication services described in this section shall be clearly documented for each caregiver and maintained in the agency's personnel records.

(d) An individual with a current Oregon State Board of Nursing medication assistant (CMA) certification who has worked as a CMA continuously for a one-year period within the two years before employment by the agency is exempt from the training requirements in this rule.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0080

Nursing Services

If the agency provides nursing services as described in OAR 333-536-0045(2)(b), the services must be provided by an Oregon-licensed registered nurse employed by or contracted with the agency and provided only to a client whose medical condition and health status is stable and predictable. The services shall be provided as requested by the client or the client's representative and shall be in accordance with the administrative rules of the Oregon State Board of Nursing (OAR chapter 851), accepted standards of nursing practice, and the service plan:

(1) Nursing services shall consist of: assessment, monitoring, provision of intermittent nursing care, and delegation of special tasks of nursing care to unlicensed persons, for clients with stable, predictable, or chronic health conditions.

(2) Delegation to the agency caregivers of special tasks of nursing care, including the administration of subcutaneous injectable medications,

ADMINISTRATIVE RULES

for clients whose conditions are stable and predictable shall be in accordance with the Oregon State Board of Nursing Administrative Rules for Registered Nurse Delegation and Assignment of Nursing Care Tasks to Unlicensed Person (OAR 851-047-0000 through 851-047-0040).

(3) The registered nurse must conduct and document a nursing assessment of the client to identify the client's nursing needs before provision of nursing services as described in this section. The assessment must be dated and signed and maintained in the client's in-home care record.

(4) The registered nurse shall participate in the development and updates of the service plan when nursing services, as described in this section, have been requested.

(a) The service plan shall include the aspects of assessment and monitoring, the specific tasks of nursing care, and the delegation of special tasks of nursing care to be conducted by the registered nurse. The service plan shall also include measurable client goals or desired outcomes specific to the nursing services being provided.

(b) When special tasks of nursing care have been delegated, the service plan shall clearly identify all delegated special tasks of nursing, the name of each caregiver to whom these tasks have been delegated, and the name of the registered nurse responsible for the delegation. The service plan shall include the date of delegation, the date the special task of nursing is to be begin, and the frequency of supervision by the registered nurse.

(5) The registered nurse shall obtain written or telephone orders from the physician or other legally recognized practitioner for all medications and medical treatments managed or administered by the agency under this section. Written orders shall be signed and dated by the physician or practitioner.

(a) Telephone orders shall be immediately recorded, dated, and signed by the registered nurse, and transmitted to the physician or practitioner for countersignature within 72 hours. The orders which have been signed by the physician or practitioner shall be incorporated into the client's record within 30 days.

(b) Changes in medications and medical treatments managed or administered by the agency shall not be made without written or telephone orders from the physician or practitioner as described in this rule.

(c) Medications and medical treatments shall be managed or administered as ordered by the physician or practitioner.

(6) Signed and dated documentation of nursing assessments, ongoing monitoring, problem identification, appropriate follow-up, progress towards goals or outcomes, the provision of nursing care, and the delegation of special tasks of nursing care by the registered nurse must be maintained in the client's agency record.

(7) The registered nurse shall conduct and document supervisory visits to the client's residence when special tasks of nursing care have been delegated in accordance with the Oregon State Board of Nursing Administrative Rules (OAR 851-047-0000 through 851-047-0040).

(8) A licensed practical nurse may perform certain tasks of nursing as allowed by the Oregon State Board of Nursing Administrative Rules (OAR 851-045-0000 through 851-045-0025).

(9) An agency must not accept or retain a client for service who requires special tasks of nursing care unless the agency employs or contracts with nursing staff or unless appropriate delegation of the task by a registered nurse can occur.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0085

Client Records

(1) A client record shall be maintained for every client served by the agency.

(2) A legible, reproducible client record shall include at least the following:

- (a) Identification data;
- (b) Referral and intake information;
- (c) Start-of-service date;
- (d) Screening and disclosure documents and documentation required by these rules;

(e) Clients' rights documentation required by these rules;

(f) All client evaluation and assessment documentation;

(g) Client service plan and updates;

(h) All personal care, medication, and nursing services documentation required by these rules;

(i) Documentation of all services rendered, coordinated with the service plan.

(j) Service and financial agreement signed by the client or the client's representative before the initiation of services that specifies the services to be provided in accordance with the service plan, and the costs for those services.

(k) End-of-services date;

(l) End-of-service summary, including the dates of service and the disposition of the client.

(3) All entries and documents in the record must be recorded in ink, typescript, or computer-generated.

(4) All entries in a client's record must be dated and signed, or otherwise authenticated by the person making the entry.

(5) The client records shall be filed in a manner which renders them easily retrievable.

(6) Precautions must be taken to protect the records from unauthorized access, fire, water, and theft.

(7) Precautions must be taken to protect client information and record confidentiality.

(8) Authorized employees of the Department shall be permitted to review client records upon request. Photocopies of the records shall be made upon request.

(9) All clients' records shall be kept for a period of at least seven years after the date of last end-of-service.

(10) Clients' records are the property of the agency.

(11) If an agency changes ownership, all clients' records shall remain in the agency, and it shall be the responsibility of the new owner to protect and maintain these records.

(12) Before an agency terminates its business, the agency shall notify the Department where the clients' records will be stored.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0090

Quality Improvement

In accordance with accepted quality improvement principles, the agency shall develop and implement written policies and procedures for an ongoing quality improvement program which monitors and evaluates the quality and appropriateness of the personal care, medication, and nursing services provided by the agency, including those services provided by contracted individuals.

(1) Quality improvement activities shall be conducted and documented at least quarterly.

(2) The quality improvement activities shall be conducted by a committee consisting of at least: an agency owner representative, administrative staff of the agency, and direct care staff of the agency.

(3) Corrective actions which address problems identified as a result of the activity shall be planned, implemented, and evaluated.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

333-536-0095

Exceptions to Rules

(1) While all agencies are required to maintain continuous compliance with the Department's rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications or the conducting of pilot projects or research. Requests for exceptions to the rules must be:

- (a) Submitted to the Department in writing;
- (b) Identify the specific rule for which an exception is requested;
- (c) Indicate the special circumstances relied upon to justify the exception;

(d) Identify what alternatives were considered, if any, and why alternatives (including compliance) were not selected;

(e) Demonstrate that the proposed exception is desirable to maintain or improve the health and safety of the clients, and will not jeopardize client health and safety; and

(f) The proposed duration of the exception.

(2) Upon finding that the agency has satisfied the condition of this rule, the Department may grant an exception.

(3) The agency may implement an exception only after written approval from the Department.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

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333-536-0100

Effective Date

The effective date of rules 333-536-0000, 333-536-0005, 333-536-0010, 333-536-0015, 333-536-0020, 333-536-0025, 333-536-0030, 333-536-0035, 333-536-0040, 333-536-0045, 333-536-0050, 333-536-0055, 333-536-0060, 333-536-0065, 333-536-0070, 333-536-0075, 333-536-0080, 333-536-0085, 333-536-0090, and 333-536-0095 shall be February 1, 2003.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04

Adm. Order No.: PH 23-2004

Filed with Sec. of State: 7-1-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 6-1-04

Rules Amended: 333-064-0025, 333-064-0070

Subject: Amends OAR 333-064-0025 (for accrediting environmental testing laboratories) to change the standards for accreditation from the National Environmental Laboratory Accreditation Conference (NELAC) 2001 Standards to NELAC 2002 Standards (Chapters 3, 4, 5 and 7) and NELAC 2003 Standards (Chapters 1, 2 and 6) as required to maintain national recognition of the Oregon Environmental Laboratory Accreditation Program by the U.S. Environmental Protection Agency's National Environmental Laboratory Accreditation Program.

Amends OAR 333-064-0070 to remove October 10, 2002 as the effective date for 333-064-0025.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-064-0025

Definitions

As used in these rules, unless the context indicates otherwise:

(1) "Accrediting Authority" means the official accrediting authority for the Oregon Environmental Laboratory Accreditation Program comprised of the Administrator of the Office of Oregon State Public Health Laboratories or designee, the Laboratory Administrator of the Department of Environmental Quality or designee and the Laboratory Administrator of the Department of Agriculture or designee.

(2) "Clean Air Act (CAA)" means the enabling legislation, **42 U.S.C. 7401 et seq. (1974), Public Law 91-604, 84 Stat. 1676 Public Law 95-95, 91 Stat., 685 and Public Law 95-190, 91 Stat., 1399**, that empowers the EPA to promulgate air quality standards, monitor and enforce them.

(3) "Clean Water Act (CWA)" means the enabling legislation under **33 U.S.C. 1251 et seq., Public Law 92-5086, Stat. 816** that empowers the EPA to set discharge limitations, write discharge permits, monitor and bring enforcement action for non-compliance.

(4) "Environmental laboratory" means a fixed location or mobile facility that analyzes environmental samples in a controlled and scientific manner.

(5) "National Environmental Laboratory Accreditation Conference (NELAC)" means the voluntary organization of state and federal environmental officials and interest groups purposed primarily to establish mutually acceptable standards for accrediting environmental laboratories.

(6) "National Environmental Laboratory Accreditation Program (NELAP)" means the program established and administered by the EPA to oversee the implementation of the NELAC Standards.

(7) "NELAC Standards" means the adopted **July 2002 NELAC Standards, Chapters 3, 4, 5 and 7, (EPA/600/R-03/049)** and **June 2003 NELAC Standards, Chapters 1, 2 and 6, (EPA/600/R-04/003)**, documents describing the elements of laboratory accreditation that was developed and established by the consensus principles of NELAC and meets with the approval requirements of NELAC procedures and policies.

(8) "NELAP approved accrediting authority" means a state or federal department/agency that has been approved by NELAP as being an entity whose accreditation and assessment program meets all of the requirements of the NELAC Standards.

(9) "On-site assessment" means an on-site visit to the environmental laboratory to verify items addressed in the ORELAP application and to evaluate the facility and analytical performance for conformance with the NELAC Standards.

(10) "ORELAP approved assessor" means an assessor whose qualification has been evaluated by ORELAP and found to meet NELAC Standards for laboratory on-site assessors.

(11) "Primary Accreditation" means accreditation by a NELAP approved accrediting authority based on a laboratory's compliance to NELAC Standards after a review of the laboratory's application, Quality Manual, PT results and on-site inspection results as described in the NELAC Standards.

(12) "Proficiency testing (PT)" means the analysis of samples obtained from providers that meet the NELAC standards for PT providers. The composition of the sample is unknown to the laboratory performing the analysis, and is used in part to evaluate the ability of the laboratory to produce precise and accurate results.

(13) "Public water system" means a water system as defined in OAR 333-061-0010.

(14) "Quality Manual (QM)" means a document stating the management policies, objectives, principles, organizational structure and authority, responsibilities, accountability, and implementation of a laboratory to ensure the quality of its product and the utility of its product to its users.

(15) "Resource Conservation and Recovery Act (RCRA)" means the enabling legislation 42 U.S.C. section 6901 et seq.(1976) that requires the EPA to protect human health and protecting and monitoring the environment by regulating hazardous waste disposal practices.

(16) "Safe Drinking Water Act (SDWA)" means the SDWA enacted in 1974 and the Safe Drinking Water Amendments of 1986, **42 U.S.C. 300f et seq., Public Law 93-523**, that is the enabling legislation that requires the EPA to protect the quality of drinking water in the U.S. by setting maximum allowable contaminant levels, monitoring, and enforcing violations.

(17) "Secondary Accreditation" means the recognition by reciprocity for the fields of testing, methods and analytes for which the laboratory holds current primary accreditation by another NELAP recognized accrediting authority.

(18) "These rules" means the Oregon Administrative Rules encompassed by OAR 333-064-0005 through 333-064-0065.

(19) "Third party assessor" means an ORELAP approved assessor who has a current contract with the Oregon Department of Human Services to perform on-site assessments of laboratories for ORELAP and is not employed by the state agencies comprising ORELAP's accrediting authority.

(20) "United States Environmental Protection Agency (EPA)" means the federal government agency with the responsibility for protecting public health and safeguarding and improving the natural environment (i.e., air, water, and land) upon which human life depends.

[Publications: The publications referenced in this rule are available for review at the agency.]
Stat. Auth.: ORS 184, 438.605, 438.610, 438.615, 438.620, 448.131, 448.150(1), 448.280(1)(b) and (2)

Stats. Implemented: ORS 438.605, 438.610, 438.615, 438.620, 448.280(1)(b) and (2)

Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 1-2001, f. & cert. ef. 1-17-01; OHD 16-2002, f. & cert. ef. 10-10-02; PH 5-2003, f. 5-15-03, cert. ef. 7-1-03; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03; PH 23-2004, f. & cert. ef. 7-1-04

333-064-0070

Effective Date

The effective date for rules 333-064-0005, 333-064-0010, 333-064-0015, 333-064-0030, 333-064-0035, 333-064-0040, 333-064-0060 and 333-064-0065 shall be October 10, 2002.

Stat. Auth.: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 438.620

Stats. Implemented: ORS 448.150(1), 448.131, 448.280(1)(b) & (2)

Hist.: PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03; PH 23-2004, f. & cert. ef. 7-1-04

Adm. Order No.: PH 24-2004

Filed with Sec. of State: 6-29-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 4-1-04

Rules Repealed: 333-025-0018, 333-025-0030, 333-025-0070, 333-025-0080, 333-025-0090, 333-025-0095

Subject: Passage of HB 2325 by the 2003 Legislature completed the process of reorganizing oversight and centralizing service for 15 health and related professions, including the practice of specializing in hearing aids. 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 provi-

ADMINISTRATIVE RULES

sions, conform continuing education audit and sanction requirements with HLO business practices, and revise specific rule titles for uniformity with all programs under the agency's administration.

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

Department of Human Services, Self-Sufficiency Programs Chapter 461

Adm. Order No.: SSP 16-2004(Temp)

Filed with Sec. of State: 7-1-2004

Certified to be Effective: 7-1-04 thru 9-30-04

Notice Publication Date:

Rules Amended: 461-135-1070, 461-145-0001

Subject: Rule 461-135-1070 is being amended to clarify that a client whose CAWEM eligibility is based on the OHP-OPU program is subject to OAR 461-135-1102, which closes the OHP-OPU program to new applicants on July 1, 2004.

Rule 461-145-0001 is being amended to count adoption assistance payments as unearned income for Food Stamp Program.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-1070

Specific Requirements; Citizen/Alien-Waived Emergent Medical (CAWEM)

To be eligible for the CAWEM program, a client must be ineligible for BCCM, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC solely because he or she does not meet citizenship or alien status requirements. If the basis for CAWEM eligibility is the OHP-OPU program, eligibility for CAWEM is subject to OAR 461-135-1102. A client who is ineligible for OHP-CHP solely because he or she does not meet citizenship requirements, cannot be eligible for CAWEM. Benefits of the CAWEM program are limited to the services described in the administrative rules of the Department of Human Services in chapter 410 of the Oregon Administrative Rules.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2004(Temp), f. & cert. ef. 7-1-04 thru 9-30-04

461-145-0001

Adoption Assistance

(1) Adoption assistance is financial assistance provided to families adopting children with special needs. Adoption assistance may be state or federally funded. Federal adoption assistance is authorized by the **Adoption Assistance and Child Welfare Act of 1980** (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.

(2) In all programs except ERDC and FS, adoption assistance is treated as follows:

(a) The portion of adoption assistance that is for the special needs of the child is excluded, including needs such as special diet, special clothing, counseling, and medical costs not covered under Title XIX.

(b) The rest of the adoption assistance is counted as unearned income.

(3) In the ERDC program, adoption assistance is excluded.

(4) In the Food Stamp program, adoption assistance is counted as unearned income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.122

Hist.: AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 24-2001, f. & cert. ef. 11-1-01; SSP 16-2004(Temp), f. & cert. ef. 7-1-04 thru 9-30-04

Adm. Order No.: SSP 17-2004

Filed with Sec. of State: 7-1-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 4-1-04, 5-1-04

Rules Adopted: 461-135-1102, 461-145-0105

Rules Amended: 461-101-0010, 461-110-0210, 461-110-0330, 461-110-0630, 461-115-0030, 461-115-0430, 461-115-0530, 461-115-0651, 461-120-0125, 461-120-0210, 461-120-0330, 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, 461-135-1110, 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, 461-175-0200, 461-175-0300, 461-180-0010, 461-180-0050, 461-180-0070, 461-180-0090, 461-180-0120, 461-180-0140, 461-195-0621

Rules Repealed: 461-135-0760

Subject: 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 also 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 461-115-0030 is being amended to clarify the determination of the date of request for a client receiving medical care on a week-end or holiday.

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 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. This rule is also being amended to correct a reference.

Rules 461-120-0330, 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.

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Rule 461-130-0330 is also 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 recovery of reimbursable public assistance benefits and imposes upon the person the burden of establishing the subject real property's fair market value.

Rule 461-135-1102 is being adopted to close the OHP-OPU program to new applicants effective July 1, 2004.

Rule 461-135-1110 is being amended to include the 2002-2003 school year income requirements for a Pell grant. To be eligible as a student of higher education for the Oregon Health Plan (OHP), an individual must meet the income requirements for a Pell grant by having an expected family contribution (EFC) less than the income amount determined by the U.S. Department of Education.

Rule 461-135-1120 is being amended to 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 also 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 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.

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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 461-180-0050 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 461-195-0621 is also being amended to bring the rule into compliance with FS law and regulations.

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.

(b) ADCM-EXT; Aid to Dependent Children Medical - Extended. ADCM-EXT provides extended medical benefits to families after their ADC benefits end.

(c) 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, service-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:

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(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.

(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; SSP 17-2004, f. & cert. ef. 7-1-04

461-110-0210

Household Group

(1) The household group is the people who live together with or without benefit of a dwelling. For homeless people, the household group is the people who consider themselves living together.

(2) A separate household group is established for all the people who live in a dwelling. A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space has — separate from other dwellings — an access to the outside that does not pass through another dwelling, a sleeping area, a bathroom, and a kitchen facility.

(3) For all programs except FS, a separate household group is established for people who live in the same dwelling as another household group, if all the following are true:

(a) There is a landlord-tenant relationship between the two groups in which the tenant is billed by the landlord at fair market value for housing.

(b) The tenant lives independently from the landlord.

(c) The tenant:

(A) Has and uses sleeping, bathroom and kitchen facilities separate from the landlord; or

(B) Shares bathroom or kitchen facilities with the landlord, but the facilities are in a commercial establishment that provides room or board or both for fair market value compensation.

(4) People who live with more than one household group during a calendar month are members of the household group in which they spend 51 percent or more of their time, except as follows:

(a) For TANF:

(A) If a parent sleeps at least 30 percent of the time during the calendar month in the dependent child's home, the parent is in the same household group as the dependent child.

(B) If a dependent child lives with two household groups in the same calendar month for one of the following reasons, include the child in the group with the caretaker relative who usually has the major responsibility for care and control of the child.

(i) For educational reasons.

(ii) The usual caretaker relative is gone from the household for part of the month because of illness.

(iii) A family emergency.

(b) For ERDC, if a child lives with different caretakers during the month, they are considered members of both household groups.

(c) For FS:

(A) Include the person in the household group in which he or she eats at least 51 percent of his or her meals.

(B) Residents of domestic violence shelters can be included in two household groups the month they enter the shelter. (The two household groups are the one they left and the one they are in after entering the shelter.)

(5) For OSIPM, people receiving waived care or nursing facility care are each an individual household group.

(6) For QMB, the household group consists of the client and their spouse, even if the spouse does not meet all nonfinancial eligibility requirements.

(7) The people in the household group who apply for benefits are called applicants. The household group and applicants form the basis for determining who is in the remaining eligibility groups.

(8) People gone from the household for 30 days or more are no longer part of the household, except for the following:

(a) For all programs except FS, people in a general hospital for 30 days or more remain in the household group unless they go into long-term care. For FS, these people are no longer in the household group.

(b) For ERDC, EXT, MAA, MAF, OHP, SAC and TANF:

(A) Caretaker relatives who are gone for up to 90 days in a residential alcohol or drug treatment facility are in the household group.

(B) Children who are gone for 30 days or more are in the household group if they are:

(i) Gone for illness (unless they go into a long-term care Title XIX facility), social service, or educational reasons;

(ii) In foster care, but expected to return to the household within the next 30 days; or

(iii) For OHP only, in a residential alcohol or drug treatment facility. If the child's household is ineligible because of income, the child is a separate household.

(c) Additionally for MAA, MAF, and TANF, a parent who is gone for 30 days or more is in the household group if:

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(A) They are absent because of education, training or employment — including absence while working or looking for work outside the area of their residence, including long-haul truck driving, fishing and active duty in the U.S. armed forces; and

(B) The other parent remains in the home.

(d) For ERDC and OHP, a person who is absent because of education, training or employment, including long-haul truck driving, fishing and active duty in the U.S. armed forces.

(9) Under OSIP-EPD and OSIPM-EPD, the household group consists only of the individual applying for or receiving benefits.

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 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 5-1999(Temp), f. & cert. ef. 4-1-99 thru 6-30-99; AFS 9-1999, f. & cert. ef. 7-1-99; 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 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 17-2004, f. & cert. ef. 7-1-04

461-110-0330

Filing Group; EXT, MAA, TANF

(1) In the EXT, MAA, and TANF programs, a filing group must include a dependent child or unborn child and the following household members (even if they are not applicants or do not meet nonfinancial eligibility requirements):

(a) Parents of the dependent children in the filing group.

(b) Parents of an unborn child in the filing group.

(c) Siblings of the dependent child, except as specified in subsection

(3)(a) of this rule. The siblings must be under the age of 18, or 18 years of age and attending school full time.

(d) For needy caretaker relatives of the dependent child, their spouse and their dependent children.

(e) Caretaker relatives.

(2) A dependent child is not included in the filing group if he or she has been or will be receiving foster care payments for more than 30 days or is receiving adoption assistance.

(3) The parents of a minor parent are not in the minor parent's filing group if:

(a) The minor parent does not live with his or her parent; or

(b) The parents of the minor parent are in the minor parent's household but are not applying for MAA or TANF for the minor parent or any of his or her siblings.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 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 13-1991, f. & cert. ef. 7-1-91; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; 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 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04

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 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, the need group consists of the people in the financial 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; SSP 17-2004, f. & cert. ef. 7-1-04

461-115-0030

Initiating the Application Process; Not FS

(1) For all programs, the client or someone authorized to act on behalf of the client must contact the Department or use another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. The request starts the application process.

(2) The date of request is one of the following:

(a) In the EA, ERDC-BAS, GA, OSIP, REF, and TANF programs, the date of request is the day the request for benefits is received by the Department.

(b) In the GAM, MAA, MAF, OSIPM, and SAC programs, the date of request is the day the medical care began, if the actual request is made no later than the next working day. If the request is received later than the next working day, the day the request is received by the Department becomes the date of request.

(c) In the ERDC-SBG program, the date of request is the date the Department sends the client a notice of their right to apply, along with an application.

(d) In the OHP and REFM programs, the date of request is the earlier of the following dates:

(A) The date the completed written application is received by the Department.

(B) The date stamped on the OHP application by an OHP outreach worker, toll-free operator or Department employee, if the completed written application is received by the Department within 30 days thereafter.

(C) The date the client receives medical care if the date identified under paragraph (A) or (B) of this subsection is the next working day.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; 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 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 17-2004, f. & cert. ef. 7-1-04

461-115-0430

Periodic Redeterminations; Not EA, ERDC, EXT, FS, OHP, REF, REFM, or TA-DVS

The Department periodically redetermines clients' eligibility for benefits and assigns a *redetermination date* by which the next determination is required. The Department selects the *redetermination date* based on the client's circumstances and according to the following requirements:

(1) In the TANF program, the Department redetermines eligibility according to the following schedule:

(a) For clients not in the monthly reporting system (MRS) and not participating in the JOBS program — at least once every six months.

(b) For clients in the MRS or participating in the JOBS program — at least once every 12 months.

(2) In the MAA, MAF, and SAC programs, the Department redetermines eligibility at least once every 12 months.

(3) In the BCCM, GA, and GAM programs, the Department determines eligibility each 12 months.

(4) In the OSIP and OSIPM programs, the Department determines eligibility each 12 months for clients who are not eligible for SSI. No redetermination is required for clients who are eligible for SSI.

(5) In the QMB program, the Department determines eligibility each 12 months for clients who are not eligible for SSI. For QMB recipients who are also eligible for MAA, MAF or OSIPM, a redetermination for QMB is completed with the redetermination of the other program.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 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 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 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, 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 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04

461-115-0530

Certification Period; OHP

(1) The OHP *certification period* is the period for which a client is certified eligible for the program. Except for clients eligible under OHP-OPU, the initial *certification period* consists of the month containing the effective date for starting medical benefits (described in OAR 461-180-0090) and the following six months. For clients in the OHP-OPU program, the initial certification period consists of the month containing the effective date for starting medical benefits and the following five months, for a total of six months. Subsequent *certification periods* are for six months.

(2) A client's OHP benefits end before the end of the certification period if the client no longer meets the program eligibility requirements or the program ends.

(3) To establish a new certification period, an OHP benefit group must file an application and be found eligible.

(4) For OHP recipients working under a JOBS Plus agreement, the *certification period* is extended to include the month after the client finishes working under the agreement.

(5) When a person wishes to be added to an OHP benefit group already certified for OHP, the entire group must reapply and establish a new *certification period* (see OAR 461-115-0050, "When An Application Must be Filed"). If the circumstances revealed on the new application would make the new benefit group ineligible, the original benefit group remains eligible for the remainder of its certification period.

(6) If a member leaves an OHP benefit group, that individual and other members of the benefit group remain eligible for the remainder of the certification period.

(7) If a current OHP client moves into another current OHP filing group, that client and the members of that filing group who are OHP-eligible are combined into one benefit group if the client is required to be in the current household's OHP filing group. The certification period for the new benefit group ends the later of the date the current client's certification period or the filing group's period was set to end.

(8) A pregnant woman found eligible for the OHP-OPP program is not assigned a certification period — she is eligible for the period described in OAR 461-135-0010.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

461-115-0651

Required Verification and When to Verify; FS

(1) Each of the following eligibility factors must be verified when a client initially applies for food stamp benefits and when a change in one of the factors is required to be reported.

(a) The identity of the applicant and any authorized representative or alternate payee.

(b) Residency.

(c) Alien status.

(d) Social Security Number (SSN) or application for an SSN.

(e) In a case being evaluated for disqualification due to a job quit or reduction of work hours — the reason for the job quit or reduction in hours.

(f) Countable income.

(g) Medical expenses, if they are used as a deduction.

(h) Disability, if a student claims unfitness for employment but the disability is not obvious.

(i) An order to pay child support and the amount actually paid.

(j) Any factor for which the Department has conflicting or incomplete information.

(2) If the client does not provide the required verification for medical expenses, court-ordered child support, or any eligibility factor for which the Department requests verification, the claimed expenses are not used to determine the food stamp benefit.

(3) In addition to the verification required by section (1) of this rule, the income for a client must be verified:

(a) Each month for a client in the monthly reporting system.

(b) Every six months for a client in the semi-annual reporting system.

(4) A client is allowed a minimum of 10 days to provide requested verification.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.111, 411.816

Hist.: AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

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).

(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.

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(2) A person meets the alien status requirements if he or she is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member 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, a person meets the alien status requirements if he or she is one of the following:

(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, OSIPM, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she:

(a) Was a qualified non-citizen before August 22, 1996;

(b) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified-noncitizen status was obtained. A person is not continuously present in the United States if he or she is absent from the United States for more than 30 consecutive days or for a total of more than 90 days; 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.

(d) Meets the alien status requirements in section (2) or (7) of this rule.

(e) In the OSIPM program only, is receiving SSI benefits.

(5) In the GA and GAM programs, a person meets the alien status requirement if he or she is one of the following:

(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.

(F) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(c) A person who meets one of the alien status requirements in section (2) or (7) of this rule.

(6) In the OSIP program, a person meets the alien status requirement if he or she is one of the following:

(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) A qualified non-citizen who physically entered the United States on or after August 22, 1996, has had the qualified non-citizen status for at least five years, and has forty qualifying quarters of coverage as defined in section (10) of this rule.

(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.

(F) 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 in section (2) or (7) of this rule.

(7) 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 program, a qualified non-citizen who meets the requirement in section (10) of this rule.

(8) Except as provided in sections (2), (4), (5), and (7) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

(a) Is ineligible for the BCCM, MAA, MAF, OHP, OSIPM, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

(9) In the FS program, a person meets the alien status requirement if he or she is one of the following:

(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).

(10) 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 program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means-tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certifica-

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tion cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

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

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; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04

461-120-0210

Requirement to Provide or Apply for SSN

(1) To meet the eligibility requirements for CAWEM, ERDC or OHP-CHP, a client need not have or apply for a social security number (SSN).

(2) Except as provided in section (1) of this rule, for all programs except EA, ERDC, OHP, and TA-DVS, to be included in the need group a person must:

(a) Provide his or her SSN; or

(b) Apply for a number if he or she does not have one and provide the number when it is received.

(3) To be eligible for benefits, a person applying for EA or TA-DVS must provide his or her SSN if he or she can.

(4) Except as provided in section (1) of this rule, for OHP, all persons included in the benefit group must provide their SSN or apply for a number and provide the number when it is received.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, 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 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

461-120-0330

Requirement to Pursue Assets

(1) For all programs, except ERDC and FS, clients must make a good faith effort to obtain any asset (other than support and medical coverage, which are covered in OAR 461-120-0340 and 461-120-0345, respectively) to which they have a legal right or claim, except as follows:

(a) A parent or caretaker relative who is exempt from participation in the JOBS program (except primary wage earners who are exempt due to remoteness as provided by OAR 461-130-0310(1)) is not required to apply for unemployment insurance benefits.

(b) Except as specified by law, a client applying for or receiving any program benefits from the Department is not required to apply for other programs it administers or for supplemental security income (SSI).

(c) A person applying for EA is required to use an asset only if the asset can be made available in time to meet the emergent need.

(d) Clients are not required to borrow money.

(2) In all programs except ERDC, FS, and medical assistance programs:

(a) The effect of failing to comply with this rule is that everyone in the filing group is ineligible. In addition, when a cash payment ends due to this penalty, eligibility for and the level of food stamp benefits are determined as if the client were receiving benefits without the effects of this rule.

(b) The penalty provided by section (2)(a) of this rule is effective until all members of the filing group comply with the requirements of section (1) of this rule.

(3) In medical assistance programs:

(a) A person is ineligible for benefits if he or she fails to comply with the requirements of this rule.

(b) The penalty provided by section (3)(a) of this rule is effective until the person complies with the requirements of section (1) of this rule.

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 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 30-1996, f. & cert. ef. 9-23-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 17-2004, f. & cert. ef. 7-1-04

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.

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; SSP 17-2004, f. & cert. ef. 7-1-04

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 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;

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(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.

(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; SSP 17-2004, f. & cert. ef. 7-1-04

461-120-0630

Requirement to Live with a Caretaker or Caretaker Relative

(1) To be eligible for the EXT, MAA, MAF, and TANF programs, a child must live with a *caretaker relative*. Documentary evidence is required to show that a client is the father of a *dependent child*.

(2) To be eligible for the EA program, a child must either live with a *caretaker relative* or have lived with one within the last six months.

(3) To be eligible for ERDC, a child must live with a *caretaker*.

(4) For the REFM program, the public or private agency with custody of the child is the *caretaker* of a child under the age of 18.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 30-1992(Temp), f. & cert. ef. 10-14-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 17-2004, f. & cert. ef. 7-1-04

461-130-0327

Good Cause

(1) A client is excused for good cause from a failure to comply with a requirement of an employment program, including an activity in a case plan (both terms defined in OAR 461-190-0161) in the following circumstances:

(a) Participation in a required activity in a case plan would have an adverse effect on or risk to the client's physical or mental health or would expose the client to increased risk of domestic violence.

(b) When the failure to comply is caused by the failure of the Department to timely provide or authorize a support service payment in the JOBS program.

(c) Appropriate child care, or day care for an incapacitated person in the household, cannot be obtained. "Appropriate child care" means that:

(A) Both the provider and the place where care is provided meet health, safety, and provider requirements as required in OAR 461-165-0180;

(B) The care accommodates the parent's work schedule; and

(C) The care meets the specific needs of the child, such as age and special-needs requirements.

(d) The work attachment position or employment offered is vacant due to a strike, lockout, or other labor dispute.

(e) The work attachment position or employment requires the client to join a union, and the client has religious objections to unions.

(f) The client belongs to a union and the employment violates the conditions of the client's membership in the union.

(g) The wage for the client's current or potential job is:

(A) Less than applicable minimum wage; or

(B) If minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(h) The client's prospective employer engages in employment practices that are illegally discriminatory on the basis of age, sex, race, religious or political belief, marital status, disability, or ethnic origin.

(i) The client's participation in a required activity in a case plan would prevent or interfere with the client's participation in an activity of the Grande Ronde Tribe's NEW program.

(j) The client's failure to participate is due to a circumstance beyond his or her reasonable control.

(k) When the failure to comply is caused by an aspect of the client's disability.

(l) The following are also "good cause" criteria in the Food Stamp program:

(A) The client has no means of transportation and would have to walk an unreasonable distance to meet the participation requirement. An "unreasonable distance" is a distance that requires a commute of more than two hours each day. The client must make a good-faith effort to secure the needed transportation.

(B) Lack of adequate child care for children who have reached age 6 but are under age 12.

(2) In the REF, REFM, and TANF programs, a client is excused from a failure to comply with a requirement of an employment program for good cause when the client is in her seventh or eighth month of pregnancy and either works in a job that requires her to work more than 10 hours each week or has a case plan that requires her to participate more than 10 hours each week.

(3) In the REF and REFM programs, a client is excused from a failure to comply with a requirement of an employment program for good cause in the following circumstances:

(a) The client quits a full-time job to accept another full-time job with a wage at least equal to the wage of the first job.

(b) The client makes a good faith effort to complete an activity on the case plan but is unable to do so.

(4) In the Food Stamp program, a client has good cause for not accepting employment or for leaving a job under the following circumstances:

(a) The hours or nature of the job interferes with the client's religious observances, convictions, or beliefs.

(b) The client accepts employment or enrolls at least half-time in any recognized school, training program, or institution of higher education that requires the client to quit a job.

(c) A client accepts employment or schooling in another county, requiring the benefit group to move and the client to quit a job.

(d) A client less than 60 years of age resigns, and the employer recognizes the resignation as retirement.

(e) The client leaves a job to follow a type of employment that moves from one area to another, such as migrant labor or construction.

(f) The client accepts a job that, for reasons beyond the control of the client, does not materialize or results in fewer work hours or a lower wage than the client's previous job.

(g) Work demands or conditions, such as not being paid for work or not being paid on schedule, make employment unreasonable.

(h) The wage for the client's current or potential job is less than applicable minimum wage or, if minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(i) The work schedule for the job in question does not conform to hours customary to the occupation or the hours worked each week are more than those customary to the occupation.

(j) The client is not obligated to accept a job during the first 30 days of registration for employment if the job is not in the client's field of experience.

(5) The Department does not require a client to provide verification of good cause if providing the verification would expose the client to increased risk of domestic violence.

Stat. Auth.: ORS 411.060, 411.816, 418.100

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Stats. Implemented: ORS 411.060, 411.816, 418.100
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 17-2004, f. & cert. ef. 7-1-04

461-130-0328 Effect of Strikes

(1) For the purposes of this rule, a *striker* is anyone participating in a strike or concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) or any concerted slowdown or other concerted interruption of operations by employees. The following persons are not *strikers*:

(a) Employees affected by a lockout.

(b) Individuals who goes on strike but who are exempt from work registration under this division of rules the day prior to the strike, unless exempt solely on the ground that they are employed.

(c) Clients who are not part of a bargaining unit on strike who do not want to cross a picket line due to fear of personal injury or death.

(2) In the EA, EXT, MAA, MAF, SAC, and TANF programs, a filing group is ineligible during any month in which a caretaker relative is a striker. If any other member of the filing group is a striker, only that person is ineligible.

(3) Households containing a striker are not eligible to participate in the Food Stamp Program unless the household was eligible for benefits the day prior to the date the member became a *striker*. An eligible household is not entitled to an increased allotment as the result of a decrease in the income of a member on strike. Eligibility of a filing group containing a striker is determined by adding to the income of the group's members who are not strikers the greater of the *striker's* current income or the *striker's* income immediately before the strike. Deductions used to determine benefits and eligibility for households subject to the net income eligibility standard are calculated for the month of application as for any other household. *Strikers* are subject to the registration requirements of this division of rules unless exempt on the day of application.

Stat. Auth.: ORS 411.060, 411.816
Stats. Implemented: ORS 411.060
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; SSP 17-2004, f. & cert. ef. 7-1-04

461-130-0330 Disqualifications

(1) In the REF and TANF programs, clients may be disqualified for failure to comply with requirements of employment programs. A disqualification is initiated only after the client has had an opportunity to participate in a conciliation process (see OAR 461-190-0231) that includes a determination by the Department of whether the client had good cause for failing to comply. The effects of a JOBS disqualification are progressive. Once a disqualification is imposed, it impacts benefits according to the following schedule until the disqualification ends in accordance with OAR 461-130-0335:

(a) There are two months of disqualification for each of the first two levels. Any client who was disqualified for any period of time in the JOBS program prior to July 1, 1996, is treated in this rule as having been disqualified for two months.

(b) At the first level, the penalty each month is a \$50 decrease in the TANF payment standard for the need group.

(c) At the second level, the penalty for the third and fourth months of disqualification is removal of the disqualified client from the need group. If the client who caused the disqualification is not in the need group but remains in the household, the \$50 reduction in the payment standard imposed at step one continues and there is no additional penalty at the second level.

(d) At the third level, the need group receives no cash benefit in the TANF program for the fifth and all subsequent months of disqualification.

(e) Applicants for TANF and participants in the Assessment program who are disqualified for failure to comply with requirements of an employment program are treated as if they had already been disqualified for two months, except those who have been disqualified for three or more months are treated the same as recipients under this section.

(2) In the Food Stamp program, the effects of disqualifications are progressive. Mandatory clients who fail to meet the requirements of a Food Stamp employment program are removed from the need group until they meet the program requirements and for a minimum of:

(a) For the first failure, one calendar month.

(b) For the second failure, three calendar months.

(c) For the third and subsequent failures, six calendar months.

Stat. Auth.: ORS 411.060, 411.816
Stats. Implemented: ORS 411.060, 411.816

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

461-135-0085 Requirement to Seek Treatment for Substance Abuse and Mental Health; Penalties

(1) In the REF and TANF programs, when directed by the Department, a member of a need group must participate in mental health or substance abuse evaluation and treatment if:

(a) Evaluation or treatment is necessary for the person to function successfully in the workplace; and

(b) Evaluation and treatment services are available at no cost to the client.

(2) Clients are responsible for providing information needed by the Department to determine their need for services related to substance abuse or mental health problems and whether the client had *good cause* for failing to meet the requirements of this rule. If a medical condition of the client must be determined in regard to the requirements of this rule, the Department will assist the client in obtaining a medical opinion from an appropriate medical professional.

(3)(a) A client who refuses to participate in an evaluation or treatment provided for in this rule without *good cause*, defined in OAR 461-135-0087, is penalized in accordance with this section. The penalties are progressive and, once imposed, continue as long as the client refuses to participate, without regard to the client's change to or from the exempt classification in the JOBS program (see OAR 461-130-0310). There are two months of penalties in each of the first two levels as follows:

(A) At the first level, the TANF payment standard is reduced by \$50 for each of the first two months of the penalty.

(B) At the second level, the TANF payment standard is reduced by \$50 and the noncompliant client is removed from the need group for the third and fourth months of the penalty.

(C) At the third level, the filing group is ineligible for the TANF program for the fifth and all successive months of the penalty.

(b) A month is counted as a month of penalty if it is a month in which:

(A) The client is penalized for one or more days; or

(B) A penalty would have become effective, if the client had not complied with the requirements of this rule before the effective date in the notice of disqualification.

(c) If a client fails to meet the requirements of section (1) of this rule while an applicant and:

(A) Has not incurred three months of penalties since July 1, 1996, the client's first month of benefits is at the first month of the second-level penalty.

(B) Has incurred three months of penalties since July 1, 1996, the client's first month of benefits is at the second month of the second-level penalty.

(C) Has incurred four or more months of penalties since July 1, 1996, the entire benefit group is ineligible.

Stat. Auth.: ORS 411.060, 411.816
Stats. Implemented: ORS 411.060, 411.816, 418.134

Hist.: 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 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

461-135-0170 Eligibility for 1972 COLA Clients; MAA and MAF

A client is eligible for MAA or MAF, if he or she meets all eligibility requirements except his or her income exceeds the income limit because of an SSB cost-of-living increase in July 1972; and

(1) The client received SSB in August 1972 and received benefits under MAA or MAF or a state program for the aged, blind, or disabled, or were eligible for such a program; or

(2) The client would have been eligible for SSB if he or she had not resided in a medical facility.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-9; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

461-135-0200 Multiple Disqualifications, Change in JOBS Status; TANF

This rule describes the method for calculating the net TANF benefit when a client's benefits are affected by the penalty provided in division 130 of this chapter of rules for failure to comply with the requirements of a *case plan* or the penalty provided by OAR 461-135-0085 and, during the same month, by a concurrent penalty related to child support or a penalty related

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to recovery from third parties (OAR 461-120-0340 and 461-120-0345 respectively).

(1) If the concurrent penalty relates to child support, during the first four months that the penalties are both applied, the penalty related to the *case plan* or to OAR 461-135-0085 is applied first, and the concurrent penalty is then applied. During the fifth and successive months, the clients are ineligible for TANF benefits, and the person whose conduct caused the penalty related to child support is ineligible for medical benefits.

(2) If the concurrent penalty relates to recovery from third parties, during the first four months that the penalties are both applied, only the penalty related to third-party recovery is applied. During the fifth and subsequent months, the penalty related to third-party recovery continues and the benefit group is ineligible for TANF benefits.

(3) A penalty imposed under OAR 461-135-0085 remains in effect when a client becomes *mandatory* while serving the penalty.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.040

Hist.: AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97;

AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

461-135-0300

Eligibility for and Needs Covered by EA

Emergency assistance is available for food and shelter needs of financial groups. To be eligible for EA, a financial group must have a shelter or food need that was caused by natural disaster or that resulted from the financial group's lack of income or cash resources during the month of application and the prior month sufficient to prevent the emergency. The lack of sufficient available money must have resulted from money becoming unavailable due to circumstances beyond the group's control. Circumstances beyond the group's control include:

(1) Theft that occurs notwithstanding the financial group's reasonable precautions to prevent theft.

(2) The need to use the money for unexpected and necessary expenditures, such as the payment for car repairs when the car is used for work or for a family emergency.

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 18-1990(Temp), f. & cert. ef. 7-13-90; AFS 26-1990, f. & cert. ef. 11-29-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-9; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

461-135-0310

Covered Shelter Needs; EA

The following shelter needs are specifically covered by the Emergency Assistance program:

(1) Rent, mortgage, and utility costs, including basic payments, connection charges, and deposits.

(2) Moving costs.

(3) Property tax up to one year, if necessary to avoid foreclosure.

(4) Transportation to another area or residence.

(5) Repairs to provide safe housing, including one-time house, electrical, and plumbing repairs if essential to the health and safety of the occupants and if less costly than moving to other quarters. Repairs are authorized under this section only for clients who are homeowners or holders of a life estate.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

461-135-0320

Time Limits; EA

(1) A financial group determined eligible for EA is eligible for assistance for 30 consecutive days for any needs covered by OAR 461-135-0300 and 461-135-0310.

(2) A benefit group is not eligible for the EA program until the first day of the twelfth month following the start of a previous period of eligibility in Oregon. This limitation applies to the whole group if any member of the group is affected by it.

(3) The limitation in section (2) does not apply if its application would make it more difficult for the client to escape *domestic violence* or place the client at risk of further *domestic violence*.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

461-135-0340

Work Requirements; EA

To be eligible for EA, an adult filing group member or a dependent child, if required to participate in the JOBS program, must not have done any of the following without good cause (see OAR 461-130-0327) in the 30 days before receiving emergency assistance benefits:

(1) Quit or refused a job.

(2) Refused a referral to a job or training.

(3) Been discharged for misconduct in accordance with the unemployment insurance compensation laws of Oregon.

(4) Reduced his or her earnings.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

461-135-0350

Eligible People; EA

To be eligible for EA, a client must be a dependent child (defined in OAR 461-135-0070), a caretaker relative (defined in OAR 461-135-0070(1)(b) or (c)), or the mother of an unborn child whose pregnancy has reached the calendar month before the month in which the due date falls.

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 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

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.

(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.

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(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; SSP 11-2004(Temp), f. & cert. ef. 4-15-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04

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 a nursing facility, an intermediate care facility for the mentally retarded (ICF/MR), or a hospital) 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 equal to or greater than 120% of the FPL (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 8-2004, f. & cert. ef. 4-1-04; SSP 9-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04

461-135-0750

Eligibility for People in Long-Term Care or Waivered Services; OSIPM

(1) A client who meets the requirements of section (2) of this rule is eligible for services in the following locations:

(a) A nursing facility.

(b) An intermediate care facility for the mentally retarded (ICF/MR).

(c) A psychiatric institution, if the person is not yet 21 years of age or has reached the age of 65.

(d) A community-based setting covered by a waiver under Title XIX of the Social Security Act.

(2) A person who resides in a location listed in section (1) of this rule is eligible for OSIPM if the person:

(a) Meets the eligibility requirements for the OSIPM program except that income is above the program standards;

(b) Has income at or below 300 percent of the full SSI standard; has established a qualifying trust as specified in OAR 461-145-0540(10)(c); or is eligible for the OSIPM-EPD program; and

(c) Meets one of the following eligibility standards:

(A) The criteria in OAR 411-015-0100;

(B) The level-of-need criteria for an ICF/MR;

(C) The eligibility standards for medically fragile children in OAR 309-044-0100 to 309-044-0210;

(D) The eligibility standards for the CHS behavioral program in OAR 411-300-0100 to 411-300-0220.

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 13-1991, f. & cert. ef. 7-1-91; 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 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04

461-135-0780

Eligibility for Pickle Amendment Clients; OSIPM

(1) A client is eligible for OSIPM under the so-called Pickle amendment (Pub. L. No. 94-566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, but is over income because of SSB cost-of-living increases after July 1977, and:

(a) Is receiving SSB;

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the client was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the client when he or she became ineligible for SSI or OSIP is used as the client's countable income. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) To determine the SSB amount the client received when last eligible for SSI or the state supplement, the cost-of-living increases for SSB are deducted from the current SSB level. The amount of the increase is determined by multiplying the current SSB amount by the number that corresponds to the month the client last received SSI (see table in section (4) of this rule). The resulting total is added to any other countable income.

(4) The following guide contains the calculations used to determine the SSB for prior years: [Table not printed See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04

461-135-0845

Valuation of Life Estate, Reversionary Interest and Property

(1) Effective July 18, 1995, the value of an expressly created life estate or other interest in real or personal property or other asset measured by or valued with respect to a life span, including that of the relevant recipient of public assistance, is established by reference to the life estate valuation tables set forth in this rule and is valued as of the time of death of the recipient of public assistance irrespective of the actual life span of the measuring life. [Table not included. See ED. NOTE.]

(2) For public assistance recovery purposes, the interest of a person in real or personal property or other asset held in joint tenancy with right of survivorship (including transfers with right of survivorship covered by ORS 93.180) or other form of concurrent ownership with one or more other persons with right of survivorship, other than a spouse, is presumed to be the value of the fractional share held by the person. The fractional share of a person is presumed to be the share reflected in the ownership documents. Such presumption may be rebutted under the Consideration Furnished Test or by Convincing Evidence of the actual consideration contributed by another co-owner of the property or asset. In the absence of any stated fractional share on the Ownership Documents, each co-owner is presumed to have an equal fractional share of ownership of the whole, unless rebutted

ADMINISTRATIVE RULES

by the Consideration Furnished Test or as otherwise established by Convincing Evidence.

(3) With respect to Real or Personal Property or an Asset held jointly by spouses, as Tenants in Common, tenants by the entirety, with right of survivorship or otherwise, such property or asset is conclusively deemed to be owned one-half by each spouse; provided, however, that in the event the Ownership Documents expressly set forth a different fractional share of ownership, and such fractional share is lawful in the appropriate jurisdiction, then the fractional share set forth in such Ownership Documents is presumed to be the fractional share owned by each spouse. Such presumption may be rebutted by Convincing Evidence.

(4) The Value of Real Property at, or prior to, the Time of Death is determined by establishing the fair market value of the property to the satisfaction of the Department. The burden of proof for establishing the Real Property's fair market value to the satisfaction of the Department lies with the person or, after the Time of Death of the person, with the person's representative, and may be established by any methodology, including the provision of an appraisal performed by an appraiser certified or licensed in the applicable jurisdiction, that the Department determines most accurately reflects the Value of the Real Property. The Value of liens and other encumbrances against the Real Property that is established by Convincing Evidence, if appropriate, is subtracted from the fair market value of the Real Property in order to derive a net fair market value of the Real Property.

(5) The Value of Personal Property consisting of shares of stock or other securities traded on an exchange is evidenced by the average of the bid and ask prices on the date of the Time of Death, or the next trading day thereafter. If such bid and ask prices are unavailable for certain stocks or securities, the Value may be established by a written estimate from the corporation or other entity issuing such shares or securities of the Value, or if such estimate is unobtainable, an estimate from a broker, trader or other Person with knowledge in the field of the Value. Liens and encumbrances established by Convincing Evidence against shares of stock or other securities is subtracted from the value of such stock or securities established by the foregoing procedure.

(6) The Value of tangible Personal Property, including, but not limited to, livestock, furniture, vehicles and other tangible items may be established:

(a) By a written estimate from a Person knowledgeable in the field of appraising such items of Personal Property; or

(b) From published sources such as catalogs of antiques or collectibles, blue books or other Convincing Evidence that accurately establishes the Value of the property. Liens and encumbrances established by Convincing Evidence against tangible personal property is subtracted from the value of such property established by the foregoing procedure.

(7) The Value of intangible Personal Property not otherwise provided for in this rule, is established by a written estimate from a Person knowledgeable in the field of appraising such items of intangible Personal Property. Liens and encumbrances established by Convincing Evidence against tangible personal property is subtracted from the value of such property established by the foregoing procedure.

(8) Notwithstanding anything to the contrary contained in this rule, in cases where an inventory has been filed with the appropriate court or an estate tax return has been filed with the appropriate governmental authority, the Value of any Real or Personal Property or other Asset is presumptively established by the amounts set forth on such inventory or estate tax return. The presumptive Value established by such inventory or return may be rebutted by Convincing Evidence.

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

Stat. Auth.: ORS 411.060, 410.070

Stats. Implemented: ORS 414.105

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2004(Temp), f. & cert. ef. 2-5-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04

461-135-1102

OHP-OPU; Effective Dates for the Program

(1) Effective July 1, 2004, the OHP-OPU program is closed to new applicants. Except as provided in section (2) of this rule, a new applicant is a person with a date of request (see OAR 461-115-0030) after June 30, 2004. A new applicant cannot be found eligible for the OHP-OPU program.

(2) A person is not a new applicant if the Department determines that the person is continuously eligible for medical assistance as follows:

(a) The person is eligible for and receiving benefits under the OHP-OPU program on June 30, 2004, or after that date pursuant to subsections (b) to (e) of this section, and the Department determines that the person continues after that date to meet the eligibility requirements for OHP-OPU.

(b) The person is eligible for and receiving benefits under the CAWEM program on June 30, 2004, and is eligible for CAWEM based on the OHP-OPU program, and the Department determines that the person continues to meet the eligibility requirements for OHP-OPU except for citizenship or alien status requirements.

(c) The person's eligibility ends under the BCCM, EXT, GAM, MAA, MAF, OHP-CHP, OHP-OPC, OHP-OPP, OSIPM, REFM, or SAC program, or under CAWEM based on such program, and at that time the Department determines that the person meets the eligibility requirements for OHP-OPU.

(d) The person is a child in the custody of the Department whose eligibility for Medicaid ends because of the child's age and at that time the Department determines that the person meets the eligibility requirements for OHP-OPU.

(e) The Department determines that the person was continuously eligible for OHP-OPU on or after June 30, 2004 under subsections (a) to (d) of this section.

(3) Except as provided in section (2) of this rule, a person who loses eligibility for a medical assistance program and applies or reapplies for medical assistance is treated as a new applicant for purposes of the OHP-OPU program.

(4) The Department intends that effective July 1, 2004, all other rules related to application, certification, recertification, or eligibility for the OHP-OPU program be applied and construed to achieve the purpose of this rule and that in the event of any ambiguity this rule controls.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 411.060, 2003 OL Ch. 710, 735

Hist.: SSP 17-2004, f. & cert. ef. 7-1-04

461-135-1110

Eligible and Ineligible Students; OHP-OPU

(1) In the OHP-OPU program, a person who is enrolled *full time* in higher education is ineligible to receive benefits, unless one of the following is true:

(a) The student:

(A) Meets the income requirements for a Pell grant;

(B) Is not currently covered by private major medical health insurance or an HMO; and

(C) Has not been covered by private major medical health insurance or by an HMO for the six months immediately preceding the date of application.

(b) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974 (19 U.S.C. § 2296).

(2) For the purposes of this rule:

(a) *Higher education* includes the following:

(A) Any public or private university, college or community college.

(B) Any post-secondary vocational or technical school that is eligible to accept Pell grants.

(b) *Full time* is defined by the school.

(c) *Meets the income requirements for a Pell grant* means the student's Student Aid Report shows an "expected family contribution" less than \$3,851 for the 2003-2004 or 2004-2005 school year.

(3) A student's enrollment status continues during school vacation and breaks. A student's *higher education* status ends when the student graduates, drops out (as verified by their disenrolling), reduces their credit or attendance hours below full-time status, is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 14-2002(Temp), f. & cert. ef. 10-30-02 thru 4-28-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

461-135-1120

Premium Requirement; OHP-OPU

In the OHP-OPU program, a monthly premium must be paid when the benefit group includes at least one non-exempt (HPN) client (see OAR 461-135-1100) as follows:

(1) The following HPNs are exempt from the premium requirement:

(a) Members of a federally recognized Indian tribe, band, or group.

(b) Eskimos, Aleuts, and 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.

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(d) Clients who are eligible for the CAWEM program (see OAR 461-135-1070).

(2) The amount of the premium is determined in accordance with OAR 461-155-0235.

(3) All non-exempt clients in the benefit group are responsible for payment of premiums.

(4) Once the amount of the premium is established, the amount will not change during the certification period unless:

(a) An HPN client becomes pregnant.

(b) A pregnant client becomes an HPN client following the end of her assumed eligibility period provided for in OAR 461-135-1100.

(c) An HPN client becomes eligible for another program (for example, GA, OSIP or TANF).

(d) An HPN client leaves the filing group.

(e) OHP cases are combined during their certification periods.

(f) An HPN client's exemption status changes.

(g) An HPN client is no longer a member of the benefit group.

(5) For premiums billed on or after July 1, 2003 and prior to February 1, 2004, a premium is considered paid on time when payment is received by the Oregon Health Plan billing office on or before the 20th day of the month after the benefit month for which the premium was billed. For premiums billed prior to July 1, 2003, a premium is considered paid on time when payment is received by the Oregon Health Plan billing office on or before the 25th day of the month after the benefit month for which the premium was billed. The day the payment arrives in the office's post office box is the date it is received.

(6) For premiums billed on or after February 1, 2004, a premium is considered paid on time when the payment is received by the Oregon Health Plan billing office on or before the 20th of the month for which the premium was billed. The day the payment arrives in the office's post office box is the date it is received. A premium not paid on time is past due. A client who does not pay a required premium on time is disqualified under OAR 461-135-1130.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 19-2003(Temp), f. & cert. ef. 7-1-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 3-2004(Temp), f. & cert. ef. 2-19-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04

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. 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 8-2004, f. & cert. ef. 4-1-04; SSP 9-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04

461-140-0040

Determining Availability of Income

This rule describes the date income is considered available, what amount of income is considered available and situations in which income is considered unavailable.

(1) Income is considered available the date it is received or the date a member of the financial group has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend.

(b) Earned income withheld or diverted at the request of an employee is considered available on the date the wages would have been paid without the withholding or diversion.

(c) An advance or draw of earned income is considered available on the date it is received.

(d) Income that is averaged, annualized, converted, or prorated is considered available throughout the period for which the calculation applies.

(e) A payment due to a member of the financial group, but paid to a third party for a household expense, is considered available when the third party receives the payment.

(2) The amount of income considered available is the gross before deductions, such as garnishments, taxes, or other payroll deductions. The following income is not considered available:

(a) Wages withheld by an employer in violation of the law.

(b) Income received by another person who does not pay the client his or her share.

(c) Income received by a member of the financial group after he or she has left the household.

(d) Moneys withheld from or returned to the source of the income to repay an overpayment from that source, if the repayment is not countable under OAR 461-145-0105 or is excluded in section (4)(b) of this rule.

(e) For a client who is not self-employed, income required to be expended on an ongoing, monthly basis on an expense necessary to produce the income, such as supplies or rental of work space. For newspaper carriers, this unavailable income is limited to the monthly cost of newspapers, bags, and rubber bands.

(f) In the FS program, income received by the financial group but intended and used for the care of someone not in the financial group as follows:

(A) If the income is intended both for someone in the financial group and someone not in the financial group, the portion of the income intended for the care of the person not in the financial group is considered unavailable.

(B) If the portion intended for the care of the person not in the financial group cannot readily be identified, the income is prorated evenly among the people for whom the income is intended. The prorated share intended for the care of the person not in the financial group is then considered unavailable.

(g) In the EXT, FS, MAA, MAF, OHP, and TANF programs, the client is a victim of domestic violence and the client's abuser controls the income and will not make the money available to the filing group.

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(3) In the OHP program, an expenditure by a business entity that benefits a principal is considered available when the expenditure is made. A principal is a person with significant authority in a business entity. This includes a sole proprietor, a self-employed person (see OAR 461-145-0910), a partner in a partnership, a member or manager of a limited liability company, and an officer or principal stockholder of a closely held corporation.

(4) The following income is considered available even if not received:
(a) Deemed income.

(b) In the GA, GAM, MAA, MAF, OSIP, OSIPM, QMB, and TANF programs, the portion of a payment from an assistance program, such as public assistance, unemployment compensation, or social security, withheld to repay an overpayment.

Stat. Auth.: ORS 409.050, 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.117, 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 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; 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 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04

461-140-0110

Periodic Income

Periodic income received on a regular basis is counted as earned or unearned income, depending on the source, or excluded.

(1) For TANF and FS clients in a filing group that includes at least one member who is working under a JOBS Plus agreement, periodic income is *excluded*.

(2) For FS clients not covered under section (1) of this rule and for ERDC clients, periodic income is counted in one of two ways. The client is given a choice to either average the income over the applicable period or to have the income counted in the month it is expected to be received.

(3) For OSIP-EPD and OSIPM-EPD clients, periodic income received during a certification period is averaged among the months in the certification period.

(4) In all other programs, periodic income is counted in the month received.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 17-2004, f. & cert. ef. 7-1-04

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, 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; SSP 17-2004, f. & cert. ef. 7-1-04

461-140-0242

Disqualifying Transfer of Resources Including Home; On or After October 1, 1993

(1) In the GA, GAM, OSIP, OSIPM, and QMB programs, a transfer of a resource (including a home) by a client or the client's community spouse on or after October 1, 1993, is a disqualifying transfer unless the transfer was made exclusively for purposes other than qualifying for benefits, if the title to the resource was transferred as described in section (2) or (3) of this rule, or the title was transferred:

(a) To the person's spouse or to another for the sole benefit of the client's spouse;

(b) To a trust described in OAR 461-145-0540(10); or

(c) To or for the sole benefit of the client's blind or disabled child.

(2) A transfer of a home by a client or the client's community spouse after October 1, 1993, is a disqualifying transfer unless the title was transferred to the person's:

(a) Child under age 21;

(b) Sibling who has equity interest in the home and was residing in the home for at least one year immediately before the client's admission to long-term care; or

(c) Son or daughter who resided with the client for at least two years immediately prior to the client's admission to long-term care and provided care that permitted the client to reside at home rather than in an institution or long-term care facility. A son or daughter provides the care required by this subsection by doing most of the following for the client, without receiving payment from the Department, on a regular basis:

(A) Prepares meals;

(B) Shops for food and clothing;

(C) Helps maintain the home;

(D) Assists with financial affairs;

(E) Runs errands;

(F) Provides transportation;

(G) Provides personal services;

(H) Arranges for medical appointments;

(I) Assists with medication.

(3) A transfer of a resource (including a home) by a client or the client's community spouse on or after April 1, 1995, is a disqualifying transfer unless:

(a) The transfer was made exclusively for purposes other than establishing eligibility or maintaining benefits;

(b) The title to the resource was transferred to the person's spouse or blind or disabled child or to another for the sole benefit of the spouse or blind or disabled child provided the transfer is arranged in such a way that no individual or entity except the spouse or blind or disabled child can benefit from the resource transferred in any way, whether at the time of transfer or any time in the future. A direct transfer, transfer instrument or trust that provides for funds or property to pass to a beneficiary who is not the spouse or blind or disabled child is not considered to be established for the benefit of one of those individuals. In order for a transfer or a trust to be considered for the sole benefit of one of these individuals, the instrument or

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document must provide for the spending of the funds involved for the benefit of the individual based on the life expectancy of the individual. When this condition is not present, a transfer penalty will be imposed;

- (c) The transfer is a transfer described in OAR 461-160-0580(2); or
- (d) The resource is transferred by the community spouse after the Department has determined the community spouse's resource allowance in accordance with OAR 461-160-0580 and the resource has not been attributed to the institutionalized spouse. Notwithstanding this subsection, a transfer of a resource by a community spouse who is receiving or applying for benefits remains subject to all rules regarding the transfer of a resource by a client.

(4) If a transfer described in section (3)(a) of this rule is made for less than fair market value, there is a rebuttable presumption that the resource was transferred for the purpose of establishing or maintaining eligibility. To rebut the presumption, the client must present evidence other than his or her own statement and must provide to the Department the information it requests for the purpose of evaluating the purpose of the transfer. To meet the burden, it is sufficient for the client to show that:

- (a) The decision to make the transfer was not within the client's control;
- (b) At the time of transfer, the client could not reasonably have anticipated applying for medical assistance;
- (c) Unexpected loss of resources or income occurred between the time of transfer and the application for medical assistance;
- (d) Because of other, similarly convincing, circumstances, it appears more likely than not that the transfer was not made, in whole or in part, for the purpose of establishing or maintaining eligibility for benefits.

(5) Section (3)(b) of this rule does not apply to a resource transferred to a trust described in OAR 461-145-0540(10).

Stat. Auth.: ORS 411.060, 411.710

Stats. Implemented: ORS 411.060, 411.710

Hist.: AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 17-2004, f. & cert. ef. 7-1-04

461-145-0105

Disqualifying Income; FS

(1) "TANF disqualifying income" is the portion of a TANF grant lost because of a reason listed in section (3) of this rule. It is determined by finding the difference between the TANF cash payment prior to imposition of the reduction and the payment due after the reduction described in section (3) is imposed. The incentive payment authorized by OAR 461-135-0210 is not included in the calculation.

(2) Eligibility for and the level of food stamp benefits are determined as if the client were receiving the TANF disqualifying income until:

- (a) The TANF penalty is removed;
- (b) The household becomes ineligible for TANF for a reason not included in section (3) of this rule; or
- (c) The TANF cash or MAA case has been closed for at least 12 months.

(3) A reduction to a TANF cash payment for any of the following reasons results in TANF disqualifying income:

- (a) A failure to pursue assets as required by OAR 461-120-0330;
- (b) A failure to help the Department obtain child support from a non-custodial parent as required by OAR 461-120-0340;
- (c) A failure to obtain medical coverage as required by OAR 461-120-0345;
- (d) A failure to comply with requirements of the employment programs (see OAR 461-130-0330);
- (e) A failure to seek treatment for substance abuse or mental health evaluation and treatment under OAR 461-135-0085;
- (f) An IPV penalty imposed under OAR 461-195-0621;
- (g) Repayment of a client error overpayment in the TANF program;
- (h) Repayment of an overpayment in the TANF program that results from an intentional program violation.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816

Hist.: SSP 17-2004, f. & cert. ef. 7-1-04

461-145-0120

Earned Income; Defined

Earned income is income received in exchange for a person's physical or mental labor. Earned income includes:

- (1) Compensation for services performed. This includes wages, salaries, commissions, tips, sick leave, vacation pay, draws, or the sale of one's blood or plasma.

(2) Income from on-the-job-training, paid job experience, JOBS Plus work experience, or Welfare-to-Work work experience.

(3) In-kind income, when the client is an employee of the person providing the in-kind income and the income is in exchange for work performed by the client.

(4) For self-employment, gross receipts and sales, including mileage reimbursements, before costs.

(5) Flexible (cafeteria plan) benefits that the employee takes as cash.

(6) Income from work-study.

(7) Income from profit sharing that the client receives monthly or periodically.

(8) Additionally for MAA, MAF and TANF, income from employer-funded temporary disability insurance and temporary worker's compensation paid to a client who is still considered to be employed while recuperating from a temporary illness or injury.

(9) In the OHP program, an expenditure by a business entity that substantially benefits a *principal*. Principal is defined in OAR 461-140-0040.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 409.050, 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 28-1992, f. & cert. ef. 10-1-92; 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 11-1999, f. & cert. ef. 10-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

461-145-0200

Foster Care Payments and Guardianship Assistance Benefits

Payments for foster care and benefits from the Guardianship Assistance program are treated as follows:

- (1) In all programs except ERDC and FS:

(a) If the provider of foster care or the guardian is in the financial group, the payment or benefit is treated as earned income except that it is excluded in the following situations:

(A) The amount the placement agency identifies as being for room and board, clothing, or personal incidental needs (including recreational expenses) of the foster care client is excluded.

(B) The amount designated for special need items of the foster care client is excluded.

(b) If the provider of foster care or the guardian is not in the financial group, the foster care payments or benefits are excluded.

(2) In the ERDC and FS programs, the payments or benefits are counted as unearned income only if the person in foster care or under guardianship is in the filing group. The payments or benefits are excluded if the person in foster care or under guardianship is in the household group but not in the filing group.

(3) In the FS program, the foster care payment or guardianship assistance benefit is counted as self-employment income if the provider of foster care and the person receiving the care or the guardian and the person under guardianship are not in the same household.

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 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 1-1993, f. & cert. ef. 2-1-93; SSP 17-2004, f. & cert. ef. 7-1-04

461-145-0230

Housing and Urban Development

(1) Payments from HUD made to a third party in behalf of the client are treated as follows:

(a) In the MAA, MAF, REF, REFM, SAC, and TANF programs, the payment is used to determine shelter-in-kind income.

(b) In the EA, ERDC, FS, GA, GAM, OHP, OSIP, OSIPM, and QMB programs, the payments are excluded.

(2) HUD payments made directly to a member of the financial group, except Youthbuild Program payments and Family Investment Centers payments, are treated as follows:

(a) In the MAA, MAF, REF, REFM, SAC, and TANF programs, the payment is used to determine shelter-in-kind income. If the payments are made in a lump sum, the lump sum is unearned income.

(b) In the EA and OHP programs, the payment is unearned income.

(c) In the ERDC, GA, GAM, OSIP, OSIPM, and QMB programs, the payments are excluded.

(d) In the FS program, payments for utilities are excluded. Other payments are unearned income.

- (3) Youthbuild Program payments are treated as follows:

(a) In the TANF program, if the Youthbuild Program participant is a dependent child in the filing group or a caretaker relative age 19 or younger,

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the payments are excluded. If the participant is a caretaker relative over age 19, the payments are treated as follows:

(A) Incentive payments that are reimbursements for specific expenses not covered by program benefits, for instance transportation and school supplies, are excluded.

(B) On-the-job training (OJT) and work experience payments are earned income.

(C) The bonus payment (the incentive payment for attendance) is unearned income.

(b) In the ERDC and OHP programs, Youthbuild payments are earned income.

(c) In the FS program, payments to clients under the age of 19 years who are under the control of an adult member of the filing group are excluded. Other Youthbuild payments are earned income.

(4) Escrow accounts established for families participating in the Family Self-Sufficiency (FSS) program sponsored by HUD are excluded.

(5) Payments related to family investment centers issued under the Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, sec. 515, 104 Stat. 4196 (1990), are treated as follows:

(a) Wages are earned income, and stipends are unearned income.

(b) Service payments for items such as child care, basic education, literacy, or computer skills training are excluded.

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 12-1990, f. 3-30-90, cert. ef. 4-1-90; 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 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; 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 9-2001, f. & cert. ef. 6-1-01; SSP 17-2004, f. & cert. ef. 7-1-04

461-145-0240

Income-Producing Contract

(1) The equity value of an income-producing contract is treated as follows:

(a) In the GA, GAM, MAA, MAF, REF, REFM, SAC, and TANF programs, it is a *countable* resource.

(b) In the EA, ERDC, FS, OHP, OSIP, OSIPM, and QMB programs, it is excluded.

(2) In all programs except MAA, MAF, REF, REFM, SAC, and TANF, income received from the contract, minus necessary costs, is counted as unearned income. The deductible, necessary costs are the same as the costs deductible under OAR 461-145-0920.

(3) In the MAA, MAF, REF, REFM, SAC, and TANF programs, income received from the contract is excluded.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04

461-145-0250

Income-Producing Property

(1) Income-producing property is any real or personal property that generates income for the financial group. Examples of income-producing property are:

(a) Livestock, poultry, and other animals.

(b) Farmland, rental homes, vacation homes, condominiums.

(2) The equity value of income-producing property is treated as follows:

(a) In the MAA, MAF, REF, REFM, SAC, and TANF programs, it is counted as a resource.

(b) In the EA, ERDC, and OHP programs, it is excluded.

(c) In the FS program, it is counted as a resource except:

(A) If the property produces an annual countable income similar to other properties in the community with comparable market value, the equity value of the property is excluded.

(B) The equity value of income-producing livestock, poultry, and other animals is excluded.

(d) In the GA, GAM, OSIP, OSIPM, and QMB programs, it is counted as a resource, except:

(A) If the property produces an annual countable income of at least six percent of its equity value, the value of the property is excluded up to a maximum of \$6,000.

(B) The total equity value is excluded if all the following are true:

(i) The property is used in a trade or business.

(ii) The property is essential to the client's self-support.

(iii) The property produces an annual countable income of at least six percent of its equity value.

(e) For grandfathered OSIP and OSIPM clients, it is counted as a resource, except that income-producing property in excess of the resource limit is excluded if all the following are true:

(A) It provides partial or full financial support or has a significant rehabilitative effect on the client.

(B) Time spent at the property or business is more profitable than working the same amount of time for wages at the usual rate of pay in the community.

(C) The property or business pays its own costs and yields a reasonable profit.

(D) The client maintains adequate bookkeeping records to show business cost and profit.

(E) The value of the business is based on the wholesale value of the inventory plus the present sale price of equipment. If the value is more than \$5,000, the client must provide expert fiscal evaluation from a local recognized authority, such as a bank. Other assets owned by the client cannot be included as business assets unless expert fiscal evaluation is provided.

(3) Income from income-producing property is counted as follows:

(a) If a financial group member actively manages the property 20 hours or more per week, the income is counted as self-employment income.

(b) If a financial group member manages the property less than 20 hours per week, the income is counted as unearned income with exclusions allowed only in accordance with OAR 461-145-0920.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700

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 20-1992, 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 19-1994, f. & cert. ef. 9-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 17-2004, f. & cert. ef. 7-1-04

461-145-0280

In-Kind Income

(1) In-kind income is compensation in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(2) In all programs except MAA, MAF, OHP, SAC, and TANF, earned in-kind income is treated according to the administrative rules on earned income.

(3) In all programs except MAA, MAF, OHP, SAC, and TANF, unearned in-kind income (except third-party payments) is treated as follows:

(a) Income from court-ordered community service work or bartering is excluded. Bartering is the exchange of goods of equal value.

(b) Items such as cars and furniture are treated according to the administrative rule for the specific type of asset.

(4) In the MAA, MAF, SAC, and TANF programs, in-kind income is excluded.

(5) Unearned third-party payments are treated as follows:

(a) Payments made to a third party that should legally be paid directly to a member of the financial group are counted as unearned income.

(b) Payments made to a third party that the payee is not legally obligated to pay directly to a member of the financial group and that the financial group does not have the option of taking as cash, and payments made by the noncustodial parent to a third party, that are court-ordered but not designated as child support, are treated as follows:

(A) In the ERDC, MAA, MAF, SAC, and TANF programs, these third-party payments are excluded.

(B) In the FS program, these third-party payments are excluded unless they are transitional housing payments for the homeless.

(C) In all other programs, these third-party payments are excluded, except those made for the financial group's shelter costs. Third-party shelter payments are treated according to the administrative rule for shelter-in-kind.

(6) In the OHP program, in-kind income is excluded except as provided in OAR 461-145-0120 and 461-145-0470.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 418.100

Stats. Implemented: ORS 409.050, 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04

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 EA, ERDC, and OHP programs, all motor vehicles are excluded.

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(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, 411.117, 418.100

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; SSP 17-2004, f. & cert. ef. 7-1-04

461-145-0410

Program Benefits

(1) Payments from GA, OSIP, REF, and TANF (including the 10 percent late processing fee discussed in OAR 461-165-0150) are treated as follows:

(a) In all programs except EA, ERDC, FS, and OHP:

(A) These payments are excluded in the month received, and any portion remaining following the month of receipt is counted as a resource.

(B) Payments made to correct an underpayment are excluded.

(b) In the EA program, the payments are counted as unearned income, except for benefit groups whose emergent need is the result of domestic violence. For those benefit groups, the payment is excluded.

(c) In the ERDC program, the payments are counted as unearned income.

(d) In the FS program:

(A) TANF payments are treated as follows:

(i) For parents and their children who live together in an alcohol or drug treatment facility and are treated as separate filing groups, the payment is prorated by dividing it by the number of people in the TANF benefit group. Each prorated share is treated as unearned income.

(ii) For all other FS clients, the payments are treated as unearned income.

(B) OSIP payments are treated as unearned income.

(C) GA and REF payments are treated as unearned income.

(D) An amount received as a late processing payment is treated as lump-sum income.

(E) Payments made to correct an underpayment are treated as lump-sum income.

(F) Ongoing special needs payments for laundry allowances, restaurant meals, shelter exceptions, and telephone allowances are treated as unearned income. All other special needs payments are excluded as reimbursements.

(e) In the OHP program:

(A) The payments are counted as unearned income if all the people included in the benefit group for the cash payment are also in the OHP financial group.

(B) A prorated share is counted as unearned income if any of the people in the cash payment are not included in the OHP financial group. A prorated share is determined by dividing the total payment by the number of people in the TANF benefit group.

(C) An administrative error overpayment (see OAR 461-195-0501(2)(a)) is excluded, and a payment made to correct an underpayment caused by the Department is excluded if the underpayment occurred prior to the budget period.

(2) TANF client incentive payments are treated as follows:

(a) In all programs except TANF, the monthly cooperation incentive special-need payment is counted as unearned income.

(b) Progress and outcome incentive payments received as cash are counted as lump-sum income. All other incentives are excluded.

(3) EA payments are treated as follows:

(a) In the ERDC and FS programs, payments made directly to the client are counted as unearned income. Dual payee and provider-direct payments are excluded.

(b) In all other programs, the payments are excluded.

(4) Payments from the EXT, GAM, MAA, MAF, OHP, OSIP-IC, OSIPM, QMB, REFM, and SAC programs are excluded.

(5) Assessment Program payments are treated as follows:

(a) In all programs except FS, these payments are excluded.

(b) In the FS program, payments for basic living expenses, made directly to the client, are counted as unearned income. All other payments are excluded.

(6) ERDC payments and TANF child care payments are counted as follows:

(a) Provider-direct payments are counted as the provider's earned income.

(b) All client-direct payments are excluded.

(7) In all programs except EA, the value of a FS benefit is excluded.

In the EA program, it is counted as a resource when determining the filing group's emergency food needs.

(8) JOBS, JOBS Plus, and OFSET service payments are excluded.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.700, 411.816

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 5-1991, f. & cert. ef. 2-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1992(Temp), f. 7-31-92, cert. ef. 8-1-92; AFS 32-1992, f. 10-30-92, cert. ef. 11-1-92; 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 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; 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 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04

461-145-0420

Real Property

Real property is land, buildings, and whatever is erected on or affixed to the land and taxed as real property. Real property that is not income-producing or the financial group's home is treated as follows:

(1) In the MAA, MAF, SAC, REF, REFM, and TANF programs, the equity value of all real property that is not excluded under a TANF Interim Assistance agreement is counted as a resource.

(2) In the EA, ERDC, and OHP programs, real property is excluded.

(3) In the FS program, real property is treated as follows:

(a) If the financial group is making a good-faith effort to sell the property at a fair market price, the property is excluded.

(b) If the financial group refuses to make a good-faith effort to sell, the equity value of the property is counted as a resource.

(4) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(a) The equity value of real property that was the home of the financial group is excluded if the financial group is making a good-faith effort to sell the property at a reasonable price.

(b) The equity value of all other real property is excluded if the financial group is making a good-faith effort to sell the property at a reasonable price. The equity value is counted after the property is excluded for nine months unless the failure to sell it is for reasons beyond the reasonable control of the financial group.

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; 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 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 17-2004, f. & cert. ef. 7-1-04

461-145-0600

Work-Related Equipment and Inventory

(1) Work-related equipment is property essential to the employment or self-employment of a financial group member. Examples are a tradesman's tools, a farmer's machinery, and equipment used to maintain an income-producing vehicle.

(2) Work-related equipment is treated as follows:

(a) In the MAF, REF, and SAC programs, the equity value of the equipment is treated as a resource.

(b) In the MAA and TANF programs:

(A) For a self-employed client participating in the microenterprise component of the JOBS program, the equity value of the equipment is excluded.

(B) For all other clients, the equity value of the equipment is treated as a resource.

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(c) In the EA, ERDC, FS, and OHP programs, the equity value of work-related equipment is excluded.

(d) In the GA, OSIP, OSIPM, and QMB programs, the value of equipment needed by a disabled or blind client to complete a plan for self-support is excluded as long as the plan is in effect. For all other equipment, the equity value of the equipment is counted as a resource.

(3) Inventory is goods that are in stock and available for sale to prospective customers.

(4) Inventory is treated as follows:

(a) In the MAF, REF, and SAC programs, the wholesale value of inventory remaining at the end of the month, minus any encumbrances, is counted as a resource.

(b) In the MAA and TANF programs:

(A) For a self-employed client participating in the microenterprise component of the JOBS program, the wholesale value of inventory remaining at the end of a quarter, less encumbrances, is counted as a resource.

(B) For all other clients, the wholesale value of inventory remaining at the end of a month, less encumbrances, is counted as a resource.

(c) In the EA, ERDC, FS, and OHP programs, inventory is excluded.

(d) In the GA, OSIP, OSIPM, and QMB programs, the value of inventory needed by a disabled or blind client to complete a plan for self-support is excluded, as long as the plan is in effect. For all other inventory, the equity value of the inventory is counted as a resource.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 411.117, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

461-145-0860

Deemed Assets, Parent of Minor Parent; ADC, ADCM

In the MAA, MAF, and TANF programs, the assets of the parents of a minor parent are deemed as follows if they are living together and the minor parent is under age 18, has never married, and is not legally emancipated.

(1) In the MAA, MAF, and TANF programs, the resources of the parents of the minor parent are excluded.

(2) The income of the parents is deemed to the minor parent when the minor parent and the minor's children live with the minor's parents.

(3) The income of the parents of a pregnant minor is deemed to the minor when the minor lives with the parents.

(4) In the MAA, MAF, and TANF programs, deemed income is considered available to the minor parent and the parent's dependent child, or to the pregnant minor, even if it is not received.

(5) The amount of the deemed income of the parents is determined as follows:

(a) A \$90 earned income deduction is allowed.

(b) The needs of the parents and the parents' dependents, living in the same household and not included in the benefit group, are deducted at the TANF Payment Standard.

(c) Amounts paid to legal dependents not living in the household are deducted.

(d) Payments of alimony or child support are deducted.

(e) Any remaining income is countable deemed income.

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 19-1993, f. & cert. ef. 10-1-93; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 17-2004, f. & cert. ef. 7-1-04

461-145-0910

Self-Employment; General

(1) Self-employment income is income resulting from one's own business, trade, or profession, rather than from a specified salary or wage paid by an employer. A client is considered self-employed if he or she meets the criteria in sections (2) and (3) of this rule. If a client has more than one self-employment business, trade, or profession, the income from each is determined separately.

(2) A shareholder in a corporation is not self-employed by virtue of the ownership interest in the corporation but only by meeting the requirements of section (3) of this rule.

(3) A person is self-employed for the purposes of this division of rules if he or she meets at least five of the following criteria:

(a) Is engaged in an enterprise for the purpose of producing income.

(b) Is responsible for obtaining or providing a service or product by retaining control over the means and manner of providing the work or services offered.

(c) Has principal responsibility for the success or failure of the business operation by assuming the necessary business expenses and profit or loss risks connected with the operation of the business, and has the authority to hire and fire employees to perform the labor or services.

(d) Is not required to complete an IRS W-4 form for an employer and is not required to have federal income tax or FICA payments withheld from a pay check.

(e) Is not covered under an employer's liability or workers' compensation insurance policy.

(f) Contracts for a site or works out of another's business location.

(4) Notwithstanding sections (2) and (3) of this rule:

(a) Home care providers paid by the Department and newspaper carriers are not self-employed.

(b) Child care providers paid by the Department, adult foster care providers paid by the Department, realty agents, and clients who sell plasma, redeem beverage containers, pick mushrooms for sale, or engage in similar enterprises are considered to be self-employed.

(5) In the ERDC, FS, MAA, MAF, REF, and TANF programs, self-employment income, including income from a microenterprise, is annualized or averaged if it meets the following criteria:

(a) Self-employment income is annualized when it is:

(A) Received during less than a 12-month period but is intended as a full year's income.

(B) From a business that has operated for a full year and the previous year is representative of what the income and costs will be during the budget month.

(b) Self-employment income is averaged when a financial group begins self-employment and is unable to determine what the income and costs will be during the budget month.

(6) In the GA, OSIP, OSIPM, and QMB programs, self-employment income is considered available upon receipt by a member of the financial group, except it is prorated over the period of work if the duration of the work exceeds one month.

Stat. Auth.: ORS 411.060, 411.816, 418.040

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; 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 9-1997, f. & cert. ef. 7-1-97; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

461-150-0010

Definitions Used in Retrospective/Prospective Eligibility and Budgeting

(1) *Eligibility* is the decision as to whether a person qualifies, under financial and nonfinancial requirements, to receive program benefits. This decision must be made before budgeting is done.

(2) *Budgeting* is the process of calculating the benefit level after eligibility has been determined.

(3) *Initial month of eligibility* means the following:

(a) The first month a benefit group is eligible for a program benefit in Oregon after a period during which the group is not eligible. For migrant and seasonal farmworker households in the FS program, the period of ineligibility must exceed one month before a new initial month of eligibility is established.

(b) For all programs except the FS program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.

(c) In the OHP program, the first month of any certification period.

(4) The *ongoing month* is one of the following:

(a) For all programs except FS and OHP, any month following the initial month of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the FS and OHP programs, any month in the certification period following the initial month of eligibility.

(5) For all programs except EA, the *payment month* is the calendar month for which benefits are issued.

(6) For EA, the *payment period* is the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(7) The *budget month* is the calendar month from which nonfinancial and financial information is used to determine eligibility and benefit level for the payment month.

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-

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95, cert. ef. 4-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 17-2004, f. & cert. ef. 7-1-04

461-150-0020

Prospective Eligibility and 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 estimated income, household composition, and other relevant factors are used to determine the client's eligibility and benefit level. The client and Department jointly estimate the client's income based on the income already received and the income the client expects to receive.

(3) When prospective budgeting is used and the actual income differs from the amount determined in accordance with section (2) of this rule, there may be a client-caused overpayment only if the financial group withheld information, failed to make a required change report, or provided inaccurate information. In that event, the Department uses the actual income to determine whether there is, and the amount of, an overpayment.

(4) Except as provided in OAR 461-150-0050, the client is not entitled to a benefit supplement if the estimated 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; SSP 17-2004, f. & cert. ef. 7-1-04

461-150-0042

Use of Prospective or Retrospective; EA

The Department uses prospective or retrospective eligibility and budgeting for EA as follows:

(1) For the month of application, prospective eligibility is used. This includes clients who leave a filing group because of domestic violence.

(2) For budgeting, the information in OAR 461-160-0140 is used to determine benefit level.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; SSP 17-2004, f. & cert. ef. 7-1-04

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:

- Initial eligibility; and
- Ongoing eligibility for a non-waivered OSIP or OSIPM client in a licensed facility that serves people who are not eligible under the Department's home- and community-based care waiver.

(3) In the GA and GAM programs, ongoing special needs are used to determine benefit amount 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; SSP 17-2004, f. & cert. ef. 7-1-04

461-155-0035

Cooperation Incentive Payment Standard; TANF and REF

(1) The cooperation incentive is a monthly payment added to the TANF cash grant. OAR 461-135-0210 explains who is eligible for this incentive payment.

(2) When there is an adult in the need group, the incentive payment is based on the number of people in the need group as follows:

- One person — \$26
- Two people — \$32
- Three people — \$43
- Four people — \$52
- Five people — \$52
- Six people — \$75
- Seven people — \$75
- Eight or more people — \$109

(3) When there is no adult in the need group, the incentive is calculated as follows:

(a) The payment authorized by section (1) of this rule is determined based on the number of people in the household group rather than in the

need group. For instance, if there are three people in the household group, the amount used for this calculation is \$43.

(b) The figure obtained in subsection (a) of this section is divided by the number of people in the household group, and the result is rounded to the next lower whole number.

(c) The figure obtained in subsection (b) of this section is multiplied by the number of people in the need group. The result is the incentive payment.

Stat. Auth.: ORS 411.060 & 418.100
Stats. Implemented: ORS 411.060 & 418.100
Hist.: AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04

461-155-0070

Income and Payment Standard; EA

(1) The income limit in the EA program is the TANF adjusted income or payment standard found in OAR 461-155-0030(2). A client is ineligible for emergency assistance in any month he or she is eligible for the TANF program unless the grant for that month is less than the payment standard only because the grant was prorated for the month.

(2) EA benefits are limited as follows:

(a) The program will provide only the minimum amount necessary to meet the emergent need.

(b) The maximum EA benefit amount for the 30-day eligibility period is \$100.

(c) Payments for food cannot exceed the maximum FS allotment by household size.

(d) The client is not eligible for an EA payment unless the payment enables the client to resolve the emergent need in its entirety without receiving JOBS support service payments (see OAR 461-190-0211 and 461-190-0221).

Stat. Auth.: ORS 411.060, 418.100
Stats. Implemented: ORS 411.060, 411.117, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 7-1990, f. & 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 18-1990(Temp), f. & cert. ef. 7-13-90; AFS 26-1990, f. & cert. ef. 11-29-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 4-2002(Temp), f. & cert. ef. 4-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04

461-155-0500

Special Needs; Overview

(1) In the GA, GAM, MAA, MAF, OSIP, OSIPM, REF, REFM, and TANF programs, special needs are needs not included in the basic standard. They may be one-time needs or ongoing needs.

(2) Ongoing special needs are needs that last several months at a consistent cost. Examples are special diets and shelter exceptions. OAR 461-155-0010 is used to determine how special needs are considered for each program.

(3) Some special need items replace the standard allowances and do not change the standard payment. No additional payments are made for these items, for instance room and board or adult foster care.

(4) To be eligible for a special need item, clients must have no other available resources in the community or in their natural support system to meet the need, excluding resources used in determining eligibility.

(5) To be eligible for a special need item, clients must not be eligible for the item through Medicare, Medicaid, or any other medical coverage.

(6) The Department will authorize payment for one-time and ongoing special needs for the following, in accordance with the rules that follow:

- One-time needs for the following:
 - Home adaptations to accommodate a client's physical condition;
 - Home repairs;
 - Moving costs;
 - Property taxes;
 - Transportation costs;
 - Community transition services.
- Ongoing needs for the following:
 - Adult foster care (AFC);
 - Food for guide dogs and special assistance animals;
 - Laundry allowances;
 - Residential care facility (RCF) or assisted living facility (ALF);
 - Restaurant meals;
 - Room and board;
 - Shelter exceptions;
 - Special diet allowances;

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(l) Telephone allowances.

(7) In the GA, GAM, OSIP, and OSIPM programs, payment for a one-time special need will be authorized if providing for the need will sustain the client's independence and stability. This includes payments to prevent foreclosure resulting from nonpayment of property taxes and payments for adaptations to the home for reasonable accommodation of physical needs. Ongoing special needs are to be provided to enhance the client's ability to meet an unmet maintenance need such as a telephone allowance in lieu of additional service hours or due to a rural setting. Ongoing special needs are to be considered if the client cannot meet these needs through family support or other service organizations that provide funding for persons who are elderly or disabled.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

461-155-0670

Special Need; Special Diet Allowance

(1) In the EXT, GA, GAM, MAA, MAF, OSIP, OSIPM, REF, REFM, SAC, and TANF programs, clients are not eligible for a special diet allowance if they are receiving any of the following:

(a) Room and board.

(b) Residential care facility (RCF) services or assisted living facility (ALF) care.

(c) Long-term care.

(d) Adult foster care (AFC) services.

(e) An allowance for restaurant meals.

(f) A commercial food preparation diet.

(2) EXT, GA, GAM, MAA, MAF, REF, REFM, SAC, and TANF clients, and OSIP and OSIPM clients receiving SSI or long-term care services in the community, are eligible for a special diet allowance if they are in an imminent life-threatening situation. The situation must be verified by medical documentation.

(3) Calculate the amount of a special diet allowance as follows:

(a) In the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs, the difference between the actual cost of the special diet and a prorated share of the FS benefit for the appropriate number of clients in the benefit group.

(b) In the GA, GAM, OSIP, and OSIPM programs, the lesser of the following:

(A) The difference between the actual cost of the special diet and the amount provided in the basic standard for food

(B) A maximum of \$300 per month, or an exceptional amount, authorized by the SPD Program Assistance Section, which will not exceed the cost of home IV therapy

(4) Local management staff must approve the request for a special diet allowance, which must include documentation of the client's medical need by an agency-approved medical authority.

(5) Each diet allowance must be reviewed at six month intervals.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; SSP 17-2004, f. & cert. ef. 7-1-04

461-160-0010

Use of Resources in Determining Financial Eligibility

A countable resource is the available resource (see OAR 461-140-0020) remaining after allowing exclusions. Countable resources are used to determine eligibility as follows:

(1) In FS, GA, GAM, MAA, MAF, QMB, REF, REFM, SAC, and TANF, a need group is not eligible for benefits if the financial group has countable resources above the need group resource limit.

(2) In EA, if a financial group has countable resources, they are used to reduce benefits.

(3) In OHP:

(a) Need group members who are Health Plan New/Noncategorical (HPN) or OHP-CHP (see OAR 461-135-1100) are not eligible if the financial group's countable resources are above the limit.

(b) If an HPN or OHP-CHP client is determined eligible, changes in resources do not affect eligibility during the certification period or until their eligibility otherwise ends.

(4) For OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD), if a financial group has countable resources above the resource limit, treat the resources above the limit as follows:

(a) If the excess resources plus other countable income are above one month's Payment Standard for the need group, the benefit group is not eligible for benefits.

(b) If the excess resources plus other countable income do not exceed one month's Payment Standard, use them to reduce benefits. This only applies to waived cases and will cause an increase in their liability.

(5) For OSIP-EPD and OSIPM-EPD:

(a) Any money in an approved account is excluded during the determination of eligibility.

(b) Assets purchased from moneys in an approved account are excluded, provided they meet the requirements of OAR 461-145-0025.

(c) Assets purchased as employment and independence expenses are excluded, provided they meet the requirements of OAR 461-145-0025.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 411.117, 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 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; 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 9-1999, f. & cert. ef. 7-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

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 EA program, 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; SSP 17-2004, f. & cert. ef. 7-1-04

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461-160-0140

How Income and Resources are Used to Determine Eligibility and Benefit for EA

The Department considers a client's income and resources in determining eligibility and benefit level for EA as follows:

(1) The financial group's countable income is compared to the TANF adjusted income payment standard for the benefit group. If countable income equals or exceeds the standard, the benefit group is not eligible.

(2) If countable income is less than the standard and the financial group meets all other EA eligibility requirements, the client is required to use all income and resources that are immediately available to meet the emergent need. The EA benefit is calculated by subtracting all income and resources that are immediately available to the client from the amount needed to meet the emergent need. The remainder is the benefit, not to exceed the limit in OAR 461-155-0070.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 411.117, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 7-1990, f. & cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 18-1990(Temp), f. & cert. ef. 7-13-90; AFS 26-1990, f. & cert. ef. 11-29-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04

461-160-0160

Earned Income Deduction; MAA, REF, TANF

(1) In the REF program, the earned income deduction authorized in this division of rules is allowed for each person in the financial group who has earned income. The earned income deduction is 50 percent of the client's gross earned income including self-employment income.

(2) In the MAA and TANF programs:

(a) For a self-employed client participating in the microenterprise component of the JOBS program, the earned income deduction for income earned in the microenterprise is 50 percent of the client's countable income calculated pursuant to OAR 461-145-0920 and 461-145-0930.

(b) For all other income, the earned income deduction is 50 percent of the client's gross earned income, including self-employment income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 15-1991(Temp), f. & cert. ef. 8-16-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 16-1993, f. & cert. ef. 9-1-93; 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 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

461-160-0430

Income Deductions; FS

(1) Deductions from income are subtracted from countable income in the following order to determine adjusted income for the Food Stamp program:

(a) An earned income deduction of 20 percent of countable earned income. The 20 percent deduction is not taken from the wages funded by grant diversions such as JOBS Plus wages or Work Supplementation wages.

(b) A standard deduction of \$134 per month for benefit groups of one, two, three, or four persons. A standard deduction of \$149 for a benefit group of five persons. A standard deduction of \$171 for benefit groups of six or more persons.

(c) A dependent care deduction not to exceed \$175 each month for each dependent, or \$200 each month for each child under age 2, for dependent care costs billed to a member of the financial group and not paid for through the OFSET program or any other program of the Department. For the cost to be deductible under this section, the care must be necessary to enable a member of the need group to:

(A) Accept or continue employment;

(B) Meet the requirements of a case plan (see OAR 461-190-0310 for a definition of case plan); or

(C) Attend vocational or educational training. A student receiving educational income is entitled to a deduction only for costs not excluded from educational income by OAR 461-145-0150.

(d) The medical deduction for the elderly and disabled clients in the need group. The deduction is calculated by determining the total of their deductible medical costs (see OAR 461-160-0415) and subtracting \$35. The remainder is the medical deduction.

(e) A deduction for child support payments a member of the household makes under a legal obligation to a child not a member of the household group, including payments for the current month and for payments on

arrearages. Child support is not deductible if collected by setoff through the Oregon Department of Revenue or by interception of a federal tax refund.

(f) A shelter deduction, calculated as follows:

(A) For FS clients required to pay room and board in nonstandard living arrangements (see OAR 461-110-0110(13)), the shelter deduction is:

(i) The cost of room and board, minus the payment standard for the benefit group; or

(ii) The actual room cost, if the client can prove that the room cost exceeds the cost described in subparagraph (i) of this paragraph.

(B) For all other clients, the shelter deduction is calculated as follows:

(i) The standard deduction and the deductions of earned income, dependent care, court-ordered child support, and medical expenses are subtracted from countable income. Fifty percent of the remainder is subtracted from the shelter cost calculated in accordance with OAR 461-160-0420.

(ii) The rounded balance is the deduction, except the deduction is limited if the need group has no disabled or elderly member. The limit is \$378.

(2) If the client cannot verify a medical or court-ordered child-support expense or cannot verify any other expense when asked to do so, the unverified expense is not used to calculate the deduction. If the client provides verification, the deduction is applied when calculating the next month's benefits. If verification is provided within the period authorized for processing applications (see OAR 461-115-0210), the initial month's benefits are recalculated using the deduction.

Stat. Auth.: ORS 411.816

Stat. Implemented: ORS 411.816 & 411.825

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 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; 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 19-1994, f. & cert. ef. 9-1-94; 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 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; 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 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2000(Temp) Suspended by AFS 28-2000(Temp), f. 10-31-00, cert. ef. 11-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 3-2001, f. 2-27-01, cert. ef. 3-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

461-160-0620

Income Deductions and Client Liability; Long-Term Care or Waivered Services

Deductions from income in the OSIP and OSIPM programs are made for clients specified in section (1) as explained in sections (1) through (9) of this rule. The client's liability is determined according to section (10).

(1) Deductions are made in the order below for clients who do not receive SSI and who:

(a) Reside in or are entering a long-term care facility; or

(b) Receive Title XIX waived services.

(2) One standard earned income deduction of \$65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is \$85 in the OSIP-AB and OSIPM-AB programs. No earned income deduction is allowed for OHP.

(3) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-140-0420.

(4) One of the following need standards is deducted:

(a) A \$30 personal needs allowance for clients in long-term care.

(b) A \$90 personal needs allowance for clients in long-term care who are eligible for VA benefits based on unusual medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(c) The OSIP maintenance standard for clients who receive waived services.

(5) A community spouse monthly income allowance is deducted from the institutionalized spouse's income if the income is made available to (or for the benefit of) the community spouse. The amount of the allowance is determined in accordance with this section.

(a) If neither spouse is eligible for SSI and both receive waived services through the home- and community-based care program in the same residence or facility, and if either spouse's countable income is less than the one-person OSIPM payment standard, an allowance is calculated separately using calculation methods 1 and 2 below. The result that is better for the couple is the allowance. For all other couples, the amount calculated using method 2 is the allowance.

(b) Calculation method 1: The allowance is the difference between the one-person payment standard of the OSIPM program (see OAR 461-155-

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0250) and the countable income of the spouse with the lesser countable income.

(c) Calculation method 2:

(A) Step 1 — Determine the maintenance needs allowance. \$1,561 is added to the amount over \$468 that is needed to pay monthly shelter expenses for the couple's principal residence. The sum or \$2,319, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(B) Step 2 — Compare maintenance needs allowance with community spouse's gross income. The community spouse's gross income is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(C) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(6) A dependent income allowance is deducted for each eligible dependent as follows:

(a) For a case with a community spouse, a deduction is permitted only if the eligible dependent's monthly income is below \$1,561. To determine the eligible dependent's income allowance:

(A) The eligible dependent's monthly income is deducted from \$1,561.

(B) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the eligible dependent's income allowance.

(b) For a case with no community spouse:

(A) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(B) The TANF standard is not reduced by the dependent's income.

(7) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

(8) In the OSIPM program, medical deductions allowed by OAR 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(9) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(10) The client liability is determined as follows:

(a) For waived clients (except in OSIPM-IC), the liability is the waived service cost or the client's adjusted income, whichever is less. This amount must be paid to the Department each month as a condition of receiving waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(b) For long-term care clients, the liability is the cost of care or the adjusted income, whichever is less.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04

461-165-0030

Concurrent and Duplicate Program Benefits

(1) A person cannot receive benefits from the Department of the same type (that is, cash, medical, or food stamp benefits) for the same month as a member of two different benefit groups or from two separate programs except as noted in this rule. This provision includes a prohibition against an individual receiving TANF concurrently with another cash assistance program funded under Title IV-E of the Social Security Act.

(a) If a GA client becomes eligible for TANF, the client's benefits are supplemented during the first month of eligibility for TANF to the TANF payment standards.

(b) A TANF recipient may receive ERDC for children who are in the household group but cannot be included in the TANF filing group.

(c) A client may receive EA, HSP, and TA-DVS benefits and cash payments from other programs for the same time period.

(d) A child who is a member of an ERDC benefit group may also be a member of one of the following benefit groups:

(A) A TANF benefit group when living with a nonneedy caretaker relative, if the caretaker relative is not the child's parent.

(B) An OSIP-AB benefit group.

(C) A TANF benefit group when living with a needy caretaker relative receiving SSI.

(e) Clients in the Food Stamp program who leave a filing group that includes a person who abused them and enter a shelter or safe home for victims of domestic violence may receive food stamp benefits twice during the month they enter the shelter or safe home.

(f) A QMB-BAS client may also receive medical benefits from EXT, MAA, MAF, OSIPM, or SAC.

(2) A person cannot receive benefits of the same type (that is, cash, medical, or food stamp benefits) for the same period from both Oregon and another state or tribal food distribution program, except as follows:

(a) Medical benefits may be authorized for an eligible client if the client's provider refuses to submit a bill to the Medicaid agency of another state and the client would not otherwise receive medical care.

(b) Cash and medical benefits may be authorized for a client in the Assessment Program if benefits from another state will end by the last day of the month in which the client applied for TANF.

(3) A person cannot receive benefits from the EXT, MAA, MAF, OHP, OSIPM, or SAC program while receiving a subsidy through the Family Health Insurance Assistance Program (FHIAP) established by ORS 735.720 to 735.740.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.117, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04

461-165-0120

Payment Procedure for Client in Hospital

(1) In the EXT, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, regular monthly benefits continue when a client enters a general hospital. The monthly benefits remain unchanged until the client returns home or enters some other living arrangement. An authorized representative designated by the client or the branch may be used if necessary.

(2) In the ERDC, GA, GAM, OSIP, OSIPM, and QMB programs, regular monthly benefits continue if a client will be in the general hospital for less than 30 days. If the client will be in the general hospital for 30 days or more, the client's needs are determined as if the client were in a nursing home.

(3) In the FS program, regular monthly benefits continue if the client will be in his or her own home 50 percent of the time or more. If the client will be in an institution for more than 50 percent of a calendar month, the client is not eligible for FS.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; SSP 17-2004, f. & cert. ef. 7-1-04

461-165-0180

Eligibility of Child Care Providers

To be eligible for child care payment from the Department, a provider must meet all of the requirements in sections (1), (2), (3), (4), and (5) of this rule.

(1) The provider must submit a completed Department listing form to the Department. If information available to the Department provides no basis for denial, the Department will approve the provider to receive payment for child care from the Department unless:

(a) The provider was previously found ineligible for payment and was not subsequently determined to be eligible; or

(b) The Department determines, following completion of Criminal History (CH) and Child Protective Service (CPS) records checks, that the provider, or other subject person, is not eligible for payment.

(2) The provider must:

(a) Allow the Department to inspect the site of care while child care is provided.

(b) Keep daily attendance records that show the arrival and departure times each day for each child in care and billing records for each child

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receiving child care benefits from the Department. The provider must keep the records for 12 months and provide them to Department staff on request.

(c) Be the person who actually provides the child care. The provider must notify the Department before using someone else to supervise children on a temporary basis.

(d) Not be in the same filing group as the child cared for and must not be the child's parent.

(e) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.

(f) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.

(3) The provider must provide child care in manner that does not involve a substantial risk to the health or safety of children in the provider's care. This determination is based on a review of CH and CPS records, an investigation of complaints, if any, and information provided by another agency.

(4) Each provider must meet the requirements of either subsection (a) or (b) of this section:

(a) A provider subject to OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 must be currently certified or registered with the Child Care Division (CCD) of the Employment Department and be in compliance with the applicable rules.

(b) A provider exempt from the rules specified in subsection (a) of this section must:

(A) Submit names of the following persons together with their authorizations for a record check through the CH record system maintained by the Oregon State Police and the CPS record system maintained by the Department:

(i) The provider and each person the provider uses to supervise children in his or her absence.

(ii) In the case of a provider who provides care for children in the provider's home:

(I) Each person 16 years of age or older who lives in the provider's home; and

(II) Each person who frequently visits the home of the provider during the hours care is provided and may have unsupervised access to a child there.

(iii) The site director of a child care facility exempt from the requirement to be certified by CCD, and each employee of the facility who may have unsupervised access to children in the facility.

(B) Comply with the requirements of OAR 461-165-0400.

(C) Meet the following requirements:

(i) Be in such physical and mental health as will not adversely affect his or her ability to care for a child in care and either:

(I) Be 18 years of age or older; or

(II) Be 16 or 17 years of age and listed with the Department in active status before May 1, 2004. When a provider under the age of 18 applies to be listed, a responsible adult must also sign the application and must jointly assume all the responsibilities of the minor provider, including the obligation to repay an overpayment. An adult whose child is cared for by the minor provider may not serve as the responsible adult if the Department makes a payment for that care.

(ii) Report to the Department, with respect to any person covered by paragraph (3)(b)(A) of this rule, any arrest and any involvement with CPS or any other agency that provides child protective services.

(iii) Report to the Department any change to his or her name or address and the addition of any person to the household within 10 days of occurrence.

(iv) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.

(v) Supervise each child in care at all times.

(vi) Prevent persons who have demonstrated behavior that may have a detrimental effect on a child from having access to the children in his or her care.

(vii) Allow custodial parents of children in his or her care to have immediate access to their children at all times.

(viii) Inform parents of the need to obtain immunizations for their children.

(ix) Take reasonable steps to protect children in his or her care from the spread of infectious diseases.

(x) Provide information, in a manner specified by the Department, required to conduct CH and CPS records checks or determine whether the provider meets health and safety requirements.

(D) Ensure that the facility where care is provided meets the following standards, unless the care is provided in the home of the child. A provider who provides care where the child lives must meet only the requirements of subparagraph (iii) of this paragraph.

(i) The facility has safe drinking water.

(ii) The facility has a working smoke detector on each floor level and in any area where children nap.

(iii) All floor levels used by children have two usable exits to the outdoors (a sliding door or window that can be used to evacuate children is considered a usable exit), or, if a second floor is used for child care, the provider has a written plan for evacuating children in an emergency.

(iv) Fireplaces, space heaters, electrical outlets, wood stoves, stairways and other hazards have barriers to protect children.

(v) Firearms, ammunition, and other dangerous items such as medicine, drugs, cleaning supplies, paints, plastic bags, and poisonous and toxic materials are kept in a secure place out of children's reach.

(vi) The building, grounds, toys, equipment, and furniture are maintained in a clean, sanitary, and hazard-free condition.

(vii) The facility has a telephone in operating condition.

(5) A provider is not eligible to receive a child care payment if the Department has referred an overpayment against the provider to a collection agency and the claim is unsatisfied.

Stat. Auth.: ORS 181.537 & 411.060

Stats. Implemented: ORS 181.537, 411.060, 411.122

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 17-1994(Temp), f. & cert. ef. 8-15-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 13-2004, f. 4-29-04, cert. ef. 5-1-04; SSP 17-2004, f. & cert. ef. 7-1-04

461-175-0200

Notice Situations; General Information

(1) For all programs except OHP and the Assessment Program, unless stated differently in a specific rule, the Department mails or otherwise provides the client with (sends) a decision notice as follows:

(a) A basic decision notice is sent whenever an application for assistance, including retroactive medical, or a request for a shelter payment under the JOBS program is approved or denied.

(b) A timely continuing benefit decision notice is sent whenever benefits are reduced or closed, or the method of payment changes to protective, vendor or two-party.

(2) A notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice, unless the delay resulted from the client requesting a hearing. If the notice is void, a new notice is sent to inform the financial group of a new date on which their benefits will be reduced or closed.

(3) A notice approving MAA, MAF, REF, REFM or TANF benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS Program entry.

(4) For EA, a basic decision notice is sent for all situations.

(5) For OHP:

(a) A basic decision notice is sent when benefits are approved or denied, when the premium amount changes, and when benefits are ended because the OHP certification period has ended.

(b) Unless otherwise provided for, a timely continuing benefit decision notice is sent whenever benefits are otherwise reduced or closed.

(6) For the Assessment Program, a basic decision notice is sent when payment for basic living expenses is denied. No other notices are required for this program.

(7) No decision notice is required if:

(a) Benefits are ended because the only eligible person(s) is deceased;

or

(b) A hearing order upholds a Department decision, and notice was sent before the client requested the hearing.

(c) A request for a support service is approved or denied in the JOBS program, except as provided in section (1) of this rule.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.117, 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 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04

ADMINISTRATIVE RULES

461-175-0300

Notice Situation; Prior Notice

(1) A basic decision notice is used if the benefit group was informed in writing, when their benefits began, that they would receive benefits only for a specific period of time.

(2) A basic decision notice is used when a special need allowance granted for a specific period of time is removed at the end of the specified period and the benefit group was informed of this in writing when the allowance began. A timely continuing benefit decision notice is required if stopping the special need allowance results in benefit closure.

(3) In the EA program, no decision notice is used if the client received a decision notice at the time of application stating that the emergency assistance was authorized for only a 30-day period.

(4) In the ADC-PLS program, a basic decision notice is used if:

(a) An employer submits a wage reimbursement billing and the Department calculates a supplement (see OAR 461-190-0416 about supplements);

(b) The benefit group received a timely continuing benefit decision notice that the method of payment would be changed from cash to employer-paid wages; and

(c) The notice specified the period of time that benefits would be diverted.

(5) In the Food Stamp program, no decision notice is required if the client received a decision notice at the time of application or redetermination stating that:

(a) The benefit group's allotment would vary from month to month and listed the anticipated changes;

(b) In the case the client applied for both cash assistance and food stamp benefits, the food stamp benefits would be reduced or closed upon approval of the cash assistance; or

(c) In the case of a benefit group that has applied for expedited benefits, receipt of benefits beyond the month of application depends on the client providing required verification (see OAR 461-115-0690). In such cases, the Department may act on the verified information without further notice.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 25-1994, f. & cert. ef. 11-1-94; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04

461-180-0010

Effective Dates; Adding a New Person to an Open Case

(1) In the following programs, the effective date for adding a person (other than an assumed eligible newborn) to the benefit group is one of the following:

(a) In the GA, OSIP, REF, and TANF programs, it is the date on which all eligibility requirements are met and verified. If benefits have been issued for the month and adding the new person would reduce benefits, the person is added the first of the month following the month in which the notice period ends.

(b) In the TANF program, for adding a child to be covered by a provider-direct child care payment, it is the first of the month in which the child is added to the benefit group.

(c) In the EXT, GAM, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, it is whichever occurs first:

(A) The date the client requests benefits, if he or she was eligible as of that date.

(B) The date all eligibility requirements are met.

(d) In the Food Stamp program:

(A) If adding the person increases benefits, it is the first of the month after the filing group reports the person has joined the household group.

(B) If adding the person reduces benefits, it is the first of the month following the month in which the notice period ends.

(e) In the QMB-BAS and QMB-DW programs, it is the first of the month after the new person has been determined to meet all QMB eligibility criteria and the Department receives the required verification.

(f) In the QMB-SMB program, it is the first of the month in which the new person has been determined to meet all QMB-SMB eligibility criteria and the Department receives the required verification.

(2) In the following programs, the effective date for adding an assumed eligible newborn to the benefit group is one of the following:

(a) In the TANF program, it is:

(A) The date of birth, if all eligibility requirements are met and verified within 45 days after the birth; or

(B) The date all eligibility factors are met and verified, if the verification is completed more than 45 days after the date of birth.

(b) In the EXT, GAM, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, it is the date of birth if all the following are true. If any of the following is not true, the newborn is added to the benefit group in accordance with section (1) of this rule.

(A) A request for benefits is made within one year of the birth. A telephone call from the attending physician, another licensed practitioner, a hospital, or the family is considered a request for benefits.

(B) The newborn has continuously lived with the mother since the date of birth.

(C) The mother was receiving EXT, GAM, MAA, MAF, OHP, OSIPM, or SAC on the date of birth, even if she is not currently eligible for benefits.

(3) In the ERDC program, the effective date for adding a person to the need group or benefit group is as follows:

(a) If adding the person to the need group will decrease the copay, the effective date is the first of the month after the client reports the person has joined the household.

(b) If adding the person to the need group increases the copay — for instance, because the person receives income — the effective date is the first of the month following the end of the decision notice period.

(c) The effective date for adding a child to the benefit group — that is, covering the cost of their care — is the earliest of the following:

(A) For newborns, the date of birth, if all eligibility requirements are met and verified within 45 days after the birth.

(B) For all other children, the first of the month in which the change is reported, if all eligibility requirements are met and verified within 45 days.

(C) For newborns and other children, if eligibility cannot be verified within 45 days, the effective date is the first of the month in which all eligibility factors are met and verified.

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 23-1990, f. 9-28-90, cert. ef. 10-1-90; 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 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

461-180-0050

Effective Dates; Suspending or Closing Benefits

This rule explains the effective date for closing or suspending benefits for the entire benefit group. The effective date is determined as follows:

(1) When prospective eligibility is used, the effective date for closing or suspending benefits is:

(a) For all cash and medical benefits for benefit groups in the ORS, the last day of the budget month.

(b) For cash and medical benefits for benefit groups not in ORS and for FS, the last day of the month in which the notice period ends.

(2) When retrospective eligibility or budgeting is used, the effective date for closing or suspending benefits is the last day of the budget month.

(3) When prospective budgeting is used, the effective date for closing or suspending benefits is the last day of the month in which the notice period ends.

(4) When an absent parent enters an ongoing TANF household, or another change occurs that ends eligibility based on the incapacity or unemployment of a parent, the effective date for closing benefits is the last day of the month in which the 30-day period described in OAR 461-125-0255 ends.

(5) For a pregnant female receiving benefits of the EXT, MAA, MAF, OSIPM, or SAC program, the effective date for closing benefits is no earlier than the last day of the calendar month in which the 60th day after the last day of pregnancy falls, except at the client's request.

(6) In the OHP program, the effective date for closing benefits is:

(a) The last day of the month in which the benefit group becomes ineligible;

(b) The date the program ends; or

(c) For cases not covered by subsection (a) or (b) of this section, the last day of the certification period.

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 2-1992, 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 2-1994, f. & cert. ef. 2-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; SSP 17-2004, f. & cert. ef. 7-1-04

ADMINISTRATIVE RULES

461-180-0070

Effective Dates; Initial Month Cash Benefits

(1) In the REF and TANF programs, the effective date for the initial month of cash benefits is as follows:

(a) For a client required to participate in the Assessment program, it is the later of the following:

(A) The day the Assessment program ends

(B) The 30th day following the date the client requests benefits, if the Department does not receive required verification until after the 30th day

(b) For a client not required to participate in the Assessment program (see OAR 461-135-0475) and not subject to OAR 461-135-0180 (Specific Requirements; TANF Pay-After-Performance), it is the day the client meets and verifies all eligibility requirements.

(c) In the TANF program, if the only eligible child is an unborn, it cannot be earlier than the first day of the calendar month preceding the month in which the due date falls.

(d) For a provider-direct child care payment (see OAR 461-165-0190), it is the first of the month in which TANF benefits begin.

(2) For GA clients, the effective date for the initial month of cash benefits is whichever of the following occurs first:

(a) The day all eligibility requirements are met and verified.

(b) The 45th day from the date the client requests benefits, if all eligibility requirements were met, but the Department did not receive documentation until after the 45th day.

(3) For OSIP clients, the effective date for the initial month of cash benefits is whichever of the following occurs first:

(a) The date the client requests benefits, if he or she was eligible as of that date.

(b) The date all eligibility requirements are met.

(4) In the EA program, the effective date for opening the case is the day benefits are issued to the benefit group. For benefit groups whose only eligible child is an unborn, the effective date cannot be earlier than the first day of the calendar month preceding the month in which the due date falls.

(5) In the ERDC-BAS and ERDC-SBG programs, the effective date for starting benefits is one of the following:

(a) The first day of the month in which the request for benefits is made, as long as:

(A) All eligibility requirements are met in that month; and

(B) Verification is provided within the application processing timeframes.

(b) If all eligibility requirements are not met in the month of request, the effective date is the first day of the month in which they are met, if verification is provided within the application processing timeframes.

(c) For benefit groups that received TANF within the 30 days before applying for ERDC, the effective date is the first of the month following closure of their TANF benefits.

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 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 26-1996, 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 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-2000, f. 1-31-00, 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; SSP 7-2003, f. & cert. ef. 4-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04

461-180-0090

Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits for an eligible client is as follows:

(1) In the GAM, MAA, MAF, OSIPM, QMB-DW, REFM, and SAC programs, it is the date the client requests benefits or, if the client does not meet all eligibility requirements on the date of request, the first day following the date the client requests benefits on which all eligibility requirements are met. See OAR 461-135-0875 and 461-180-0140 regarding retroactive eligibility for some medical programs.

(2) In the EXT program, it is the first of the month following the month that Assessment, MAA, or MAF program benefits end.

(3) In the OHP program:

(a) If the client completes the application within the time period described in OAR 461-115-0190:

(A) In the OHP-OPU program, it is the first of the month following the month in which the Department makes the eligibility determination.

(B) In all other OHP programs, it is the date of request (see OAR 461-115-0030) or, if the client does not meet all eligibility requirements on the

date of request, the first day after the date of request that the client meets all eligibility requirements.

(b) If the client does not complete the application within the time period described in OAR 461-115-0190, the application will be denied. After the denial, the determination of an effective date requires a new date of request and application.

(4) In the QMB-BAS program, it is the first of the month after the benefit group has been determined to meet all QMB-BAS eligibility criteria and the Department receives the required verification.

(5) In the QMB-SMB program, it is the first of the month in which the benefit group meets all QMB-SMB eligibility criteria and the Department receives the required verification.

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 13-1991, f. & cert. ef. 7-1-91; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

461-180-0120

Effective Dates; Removing a Person

For all programs, except in cases using APR, the effective date for removing a person from the benefit group is one of the following:

(1) If the person has left the benefit group in the current budget month because he or she is ineligible, is disqualified, or has left the household, the effective date is:

(a) For changes reported through the MRS:

(A) The first of the payment month, if the change will reduce benefits.

(B) The last day of the budget month, if the change will end benefits.

(2) For changes reported outside the MRS and for all disqualifications:

(A) The first of the month after the notice period ends, if the change will reduce benefits.

(B) The last day of the month in which the notice period ends, if the change will end benefits.

(2) If the person is reasonably expected to leave the household next month, the effective date is the later of the following:

(a) The first of the month following the month in which the person leaves the household group, if the change will reduce benefits.

(b) The end of the month in which the person is expected to leave the household group, if the change will end benefits.

(3) In the OHP program, if the person is receiving benefits from a program that is ending, the effective date is the day on which the program ends.

Stat. Auth.: ORS 409.050, 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 23-1990, f. 9-28-90, cert. ef. 10-1-90; 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 13-1993(Temp), f. & cert. ef. 7-1-93; AFS 21-1993, f. & cert. ef. 10-12-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 17-2004, f. & cert. ef. 7-1-04

461-180-0140

Effective Dates; Retroactive Medical Benefits

(1) In the MAA, MAF, OSIPM, and SAC programs:

(a) If a benefit group requests and is eligible for retroactive medical benefits, the earliest date they can be eligible is three months before the date of request. For example, if the benefit group requests benefits on July 10th, eligibility may begin as early as April 10.

(b) After the earliest date is established, eligibility is determined on a month-by-month basis. The period starts on the earliest established date and ends on the date the benefit group requests benefits. For example, if the benefit group requests benefits on August 10th, the earliest date is May 10. Eligibility is established separately for May 10 through May 31, June 1 through June 30, July 1 through July 31, and August 1 through August 9.

(2) In the QMB-BAS programs:

(a) If a benefit group currently eligible for QMB-BAS requests and is eligible for retroactive medical benefits under MAA, MAF, OSIPM, or SAC, the earliest date they can be eligible is three months before the effective date for QMB-BAS.

(b) After the earliest date is established, eligibility is determined on a month-by-month basis. The period starts on the earliest established date and ends on the effective date for QMB-BAS. For example, if the benefit group requests benefits on August 10 and the effective date is September 1, the earliest date the group can be eligible for retroactive medical benefits is June 1. Eligibility is established separately for June 1 through June 30, July 1 through July 31, and August 1 through August 31.

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(3) If a benefit group currently eligible for QMB-DW requests and is eligible for retroactive medical benefits, the earliest date they can be eligible is three months before the effective date of their initial eligibility.

(4) If a benefit group currently eligible for QMB-SMB requests and is eligible for retroactive payment of Part B Medicare premiums, the earliest date they can be eligible is three months before the effective date of their initial eligibility.

(5) If a benefit group currently eligible for REFM requests and is eligible for retroactive medical benefits, the earliest they can be eligible is the most recent of the following:

(a) The date the benefit group arrived in the United States; or

(b) Three months before the date of request.

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 2-1994, f. & cert. ef. 2-1-94; SSP 17-2004, f. & cert. ef. 7-1-04

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, a waiver of the right to hearing, or by a state or federal court:

(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 in accordance with OAR 461-145-0105.

(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) A person is disqualified from receiving benefits in the program in which the fraud occurred for a 10-year period if the person:

(A) Is 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;

(B) Is convicted in state or federal court of having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive benefits simultaneously from two or

more states under programs that are funded under the Food Stamp Act of 1977;

(C) Is 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 benefits in two or more states under the supplemental security income program under Title XVI of the Social Security Act;

(D) Is found in an IPV hearing or admits, in a written waiver of the right to an IPV hearing, 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 to receive benefits in two or more states under the supplemental security income program under Title XVI of the Social Security Act; or

(E) Is found in an IPV hearing or admits, in a written waiver of the right to an IPV hearing, to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive benefits simultaneously from two or more states under programs that are funded under the Food Stamp Act of 1977.

(b) The disqualification provided for in this rule begins on the date the individual is convicted, the date of the final order in an IPV hearing, or the date the person waives the IPV hearing as applicable.

(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; SSP 17-2004, f. & cert. ef. 7-1-04

Adm. Order No.: SSP 18-2004

Filed with Sec. of State: 7-12-2004

Certified to be Effective: 7-12-04

Notice Publication Date:

Rules Amended: 461-180-0050

Subject: OAR 461-180-0050 is being amended to correct a spelling error that occurred with the July 1, 2004 permanent rule filing.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-180-0050

Effective Dates; Suspending or Closing Benefits

This rule explains the effective date for closing or suspending benefits for the entire benefit group. The effective date is determined as follows:

(1) When prospective eligibility is used, the effective date for closing or suspending benefits is:

(a) For all cash and medical benefits for benefit groups in the MRS, the last day of the budget month.

(b) For cash and medical benefits for benefit groups not in MRS and for FS, the last day of the month in which the notice period ends.

(2) When retrospective eligibility or budgeting is used, the effective date for closing or suspending benefits is the last day of the budget month.

(3) When prospective budgeting is used, the effective date for closing or suspending benefits is the last day of the month in which the notice period ends.

(4) When an absent parent enters an ongoing TANF household, or another change occurs that ends eligibility based on the incapacity or unemployment of a parent, the effective date for closing benefits is the last day of the month in which the 30-day period described in OAR 461-125-0255 ends.

(5) For a pregnant female receiving benefits of the EXT, MAA, MAF, OSIPM, or SAC program, the effective date for closing benefits is no earlier than the last day of the calendar month in which the 60th day after the last day of pregnancy falls, except at the client's request.

(6) In the OHP program, the effective date for closing benefits is:

(a) The last day of the month in which the benefit group becomes ineligible;

(b) The date the program ends; or

(c) For cases not covered by subsection (a) or (b) of this section, the last day of the certification period.

Stat. Auth.: ORS 409.050, 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 2-1992, 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 2-1994, f. & cert. ef. 2-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 18-2004, f. & cert. ef. 7-12-04

ADMINISTRATIVE RULES

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

Adm. Order No.: SPD 19-2004
Filed with Sec. of State: 6-23-2004
Certified to be Effective: 6-23-04
Notice Publication Date: 6-1-04
Rules Amended: 411-200-0010

Subject: The Department's Disability Determination Services section has amended 411-200-0010, General Policy rule under Rates of Payment - Medical rules to reflect the current Oregon Medical Fee and Relative Value Schedule in OAR 436, Division 009, updated effective April 1, 2004.

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, Oregon Administrative Rules chapter 436, division 009, effective April 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 - 344.690
Hist.: SDSA 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; SPD 19-2004, f. & cert. ef. 6-23-04

Adm. Order No.: SPD 20-2004(Temp)
Filed with Sec. of State: 7-7-2004
Certified to be Effective: 7-7-04 thru 1-3-05
Notice Publication Date:
Rules Amended: 411-015-0015

Subject: The Service Priority/Clients Served rule, OAR 411-015-0015 is temporarily amended, effective 07/07/2004 to include clients who meet all other Medicaid Eligibility factors and score service priority levels 12 or 13 on a Client Assessment Planning Systems (CAPS) assessment. This rule change will allow the Department to restore services to those clients and to those new applicants who can meet service priority levels 13 or below.

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 or TANF and are assessed as meeting at least one of the priority levels (1) through (13) as defined in OAR 411-015-0010.

(2) Persons eligible for Oregon Project Independence funded services if they meet at least one of the priority levels (1) through (18) of OAR 411-015-0010.

(3) Persons needing Risk Intervention Services in areas designated to provide such services. Persons with the greatest priority under OAR 411-015-0010 will be served first.

(4)(a) Persons sixty-five years of age or older 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 spe-

cialized 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 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 Department's 1915C Waiver for seniors and people with physical disabilities.

(5) Title XIX Home and Community Based Care Waivered Services paid for under the Department's 1915(c) Waiver are not intended to replace the resources available to a client from their natural support system of relatives, friends, and neighbors. Services may be authorized only when the natural support system is unavailable, insufficient or inadequate to meet the needs of the client. Clients with excess income shall contribute to the cost of care pursuant to OAR 461-160-0610 and 461-160-0620.

Stat. Auth.: ORS 410.060, 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; SPD 8-2004, f. & cert. ef. 4-27-04; SPD 20-2004(Temp), f. & cert. ef. 7-7-04

***** Department of Justice Chapter 137

Adm. Order No.: DOJ 10-2004
Filed with Sec. of State: 7-1-2004
Certified to be Effective: 7-1-04
Notice Publication Date: 5-1-04
Rules Adopted: 137-055-3430, 137-055-3485, 137-055-5030, 137-055-5045, 137-055-6210, 137-055-7190

Rules Amended: 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

Subject: 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 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.

ADMINISTRATIVE RULES

Rules Coordinator: Shawn Irish—(503) 986-6240

137-055-1070

Provision of Services

(1) For the purposes of this rule, the following definitions apply:

(a) "Full services case" means a case in which the full range of support enforcement services required under ORS 25.080(4) are provided;

(b) "Limited services case" means a case in which the provisions of ORS 25.080 do not apply and one or more collection, accounting, distribution or enforcement services are provided pursuant to state or federal law.

(2) When any Oregon court order for child and/or spousal support is received, the administrator shall:

(a) If the order requires payment of child support or child and spousal support and seeks collection, accounting, distribution and enforcement services:

(A) Create a full services case on the Child Support Enforcement Automated System (CSEAS) if one does not already exist;

(B) Initiate appropriate enforcement action; and

(C) Send the parties the information required in OAR 137-055-1060(4);

(b) If the order requires payment of spousal support only and seeks collection, accounting, distribution and enforcement services:

(A) Create a limited services case on the CSEAS if one does not already exist;

(B) If applicable, add arrears under ORS 25.015 or establish arrears under ORS 25.167; and

(C) Initiate income withholding under ORS 25.372 to 25.427.

(c) If the order is silent, unclear or contradictory on the services to be provided and no application or other written request for support enforcement services has been received:

(A) Create an information only case on the CSEAS for the state case registry if one does not already exist; and

(B) Send the parties a letter explaining that no services will be provided and why. The letter must include a statement that the obligor or obligee may apply for support enforcement services at any time if the order includes a provision for child support.

(d) If the order seeks only payment through the Department of Justice and no application or other written request for support enforcement services has been received:

(A) Create an information only case on the CSEAS for the state case registry, if one does not already exist, to receive and distribute payments in accordance with OAR 137-055-6020; and

(B) Send the parties a letter explaining that the program will only provide distribution of support payments and why. The letter must include a statement that the obligor or obligee may apply for support enforcement services at any time if the order includes a provision for child support.

(e) If the provisions of subsection (c) or (d) apply and a party subsequently completes an application or other written request for support enforcement services, the administrator shall process the application or request in accordance with OAR 137-055-1060.

(3) When a person applies for services under OAR 137-055-1060 for establishment or enforcement of a child support order, the case is a full services case.

(a) The administrator will perform all mandated services under state and federal law; and

(b) The administrator will determine which non-mandated services will be provided, but may consider input from the applicant in making that determination.

(4)(a) When a person applies for services under OAR 137-055-1060 and there is more than one parent who may be obligated to pay support, the applicant may apply for services:

(A) To establish and collect support from only one parent; or

(B) To establish and collect support from more than one parent.

(b) A separate application under OAR 137-055-1060 is required for each parent the applicant wishes to pursue.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020, 25.080, 25.140, 25.164

Hist.: AFS 20-2002, f. 12-20-02 cert. ef. 1-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1070; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1070; DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-1180

Confidentiality — Address of Record

(1) "Address of record" means an address provided by a party in a child support or paternity case to the administrator that may be an address other than the party's home address but is an address where the party can receive legal papers. The address of record may be released in writing to the

other party during the pendency of a child support or paternity legal proceeding. The address of record will be used on all legal documents.

(2) A party may provide or amend an address of record to the administrator at any time the child support case is open.

(3) The Child Support Program will provide annual notice to parties that they may provide an address of record to the administrator at any time.

(4) The administrator will provide notice to parties of the opportunity to provide an address of record at the initiation of any legal action that requires the service of legal documents on a party or would cause the following to be shared with the other party as part of the legal action:

(a) Home, mailing or contact address;

(b) Social security number;

(c) Telephone number;

(d) Driver license number;

(e) Employer's name, address and telephone number.

(5) The administrator will maintain the address of record on the case record.

(6) If a party has provided an address of record and the address is more than six months old, the administrator will provide the party with notice and opportunity to update the address of record prior to initiating any legal action.

(7) An address of record may be any place that a party can receive mail but must be located within the same state as the party's home.

(8) An address of record shall be documented on the case record and will remain in force until such time as a party may retract the address of record in writing.

(9) Notwithstanding the provisions of section (8), when documents sent to a party's address of record are returned because the address of record is not valid, the administrator shall use, in order of preference, the party's mailing, contact or residence address as the address of record. The administrator shall notify the party that such address may be released to the other party(ies), and inform the party that a new address of record may be submitted.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.011, 25.020, 25.080, 25.085

Hist.: AFS 23-1998, f. & cert. ef. 11-2-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0292; AFS 5-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1180; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1180; DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-2040

District Attorney Enforcement Responsibility for New and Continued Child Support Services

(1) The district attorney of any Oregon county must provide support enforcement services pursuant to ORS 25.080 for any resident of the same county who applies for service. However, if the person obligated to pay support resides in the same county where the operative support order is entered, the district attorney of the order county must provide the enforcement services.

(2) The district attorney of any Oregon county must provide continued support enforcement services as required in OAR 137-055-1100 for any person who resides in the same county. However, if the person obligated to pay support resides in the same county where the operative support order is entered, the district attorney of the order county must provide the enforcement services.

(3) When the person applying for or receiving continued service resides in another state, the district attorney of the Oregon county where the obligor resides must provide enforcement services.

(4) When both the person applying for or receiving continued service and the obligated party reside in another state:

(a) If there is an Oregon order, the district attorney of the order county must provide the enforcement services;

(b) If there is no Oregon order, the district attorney of the county where the child resides or where the obligor's income or property is located must provide the enforcement services;

(c) If there is no Oregon order and the obligor has no income or property located in the state, but it is anticipated that the obligee will be moving to this state, the district attorney of the county where the obligee is anticipated to reside must provide the enforcement services; or

(d) If there is no Oregon order, the obligor has no income or property located in the state, the obligee is not anticipated to be moving to this state, but continuation of services is being provided pursuant to OAR 137-055-1100, the district attorney of the county where the case was previously assigned must provide the enforcement services

(5) The matrix set out in Table 1 is offered as an aid in applying sections (1) through (4) of this rule. [Table not included. See ED. NOTE.]

ADMINISTRATIVE RULES

(6) Notwithstanding the foregoing sections, the district attorney of any Oregon county may elect to perform support enforcement service for any obligee who so authorizes.

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

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080

Hist.: AFS 59-1986(Temp), f. & ef. 8-1-86; AFS 9-1987, f. & ef. 2-6-87; AFS 28-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-35-057; AFS 10-1992, f. & cert. ef. 4-3-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0040; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2040; DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-3420

Periodic Review and Modification of Child Support Order Amounts

(1) For the purposes of this rule, the following definitions apply:

(a) "Determination" means an order resulting from a periodic review which finds that the current order of support is in "substantial compliance" with the Oregon guidelines.

(b) "Guidelines" means the guidelines, the formula, and related provisions in OAR 137-050-0320 through 137-050-0490.

(c) "Periodic Review" means proceedings initiated under ORS 25.287.

(d) "Review" means an objective evaluation by the administrator of the information necessary for application of the guidelines to determine:

(A) The presumptively correct child support amount; and

(B) The need to provide in the order for the child's health care needs through health care coverage or other means, not to include Medicaid, regardless of whether an adjustment in the amount of child support is necessary.

(e) "Substantial compliance" means that the current support order is within at least 15 percent or \$50, whichever is less, of the presumptively correct child support amount as calculated using the guidelines;

(2) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program shall notify annually the obligor and obligee of their right to request a periodic review of the amount of support ordered.

(3) The purpose of a periodic review is to determine, based on information from the parties and other sources as appropriate, whether the current child support order should be modified to assure substantial compliance with Oregon's child support guidelines, or to order health care coverage for the child(ren).

(4) The administrator may initiate a periodic review if a written request for periodic review is received from any party and 24 months have passed since the date the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted.

(5) The administrator must complete the determination that the order is in substantial compliance with the guidelines or complete the modification of the existing order within 180 days of receiving a written request for a periodic review, or locating the non-requesting parent, if necessary, whichever occurs later.

(6) The administrator is responsible for conducting a periodic review in this state or for requesting that another state conduct a review pursuant to OAR 137-055-7190. As provided in ORS 110.429 and 110.432, the law of the state reviewing the order applies in determining if a basis for modification exists.

(7) Upon receipt of a written request for a periodic review, the administrator will notify the non-requesting party of the review in writing and provide a copy of the notice to the requesting party. The notice must advise the parties:

(a) Of the opportunity to provide information, with regard to themselves and the other party if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;

(b) That the administrator will consider written information received from any party prior to calculating the presumed correct amount of support;

(c) That the administrator will not conduct a review or calculate a presumed correct child support amount until 30 days has passed since the date of the notice unless documentation or written information is received from both the obligor and obligee before the 30 days have passed; and

(d) That a modification to the support amount will affect only support owing on or after the date of service on the last non-requesting party.

(8) The administrator will notify the obligor and obligee in writing of the presumed correct support amount under the child support guidelines. This notification:

(a) May be by service of a proposed determination that the existing order is in substantial compliance with the guidelines, or a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(b) Must advise both the obligor and obligee that each party has 30 days from the date of service of the notice to object to the determination or proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has passed; and

(c) Must include the request for hearing form for each of the parties if the administrator uses an administrative determination or motion form.

(9) If a party wishes to object to the proposed determination or modification, the party must file a written request for hearing with the administrator or court before the 30 day period has passed.

(10) Upon receipt of a written request for hearing opposing the proposed determination or modification, the administrator will:

(a) Review the case to determine whether the support should be recalculated and, if so, notify both parties of the new presumed amount;

(b) Seek a consent order; or

(c) Ensure that the matter is set for hearing if no other resolution is achieved.

(11) If no request for hearing is filed within the 30 day period, the administrator will submit the determination or modification of the support order to the circuit court for entry in the court register.

(12) If a hearing is held on a determination and the administrative law judge makes a finding that the order is not in substantial compliance with the guidelines, the administrative law judge must enter a modified order with the support amount that complies with the guidelines.

(13) An appeal under this rule will be as provided in ORS 25.287.

(14) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

Stat. Auth.: ORS 416.455; ORS 180.345

Stats. Implemented: ORS 25.080, 25.287, 107.135, 416.425

Hist.: AFS 65-1989, f. 10-31-89, cert. ef. 11-1-89; AFS 11-1992(Temp), f. & cert. ef. 4-30-92; AFS 26-1992, f. & cert. ef. 9-30-92; AFS 20-1993, f. 10-11-93, cert. ef. 10-13-93; AFS 21-1994, f. 9-13-94, cert. ef. 12-1-94; AFS 17-1997(Temp), f. & cert. ef. 9-16-97; AFS 17-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 75-1998, f. 9-11-98, cert. ef. 9-15-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 9-2000, f. 3-13-00, cert. ef. 4-1-00; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0072; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3420; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-3430

Substantial Change in Circumstance Review and Modification of Child Support Order Amounts

(1) For purposes of this rule the definitions provided in OAR 137-055-3420 apply.

(2) Notwithstanding OAR 137-055-3420, proceedings may be initiated at any time to review and modify a support obligation based upon a substantial change in circumstances.

(3) The administrator will conduct a review based upon a request for a change of circumstances modification only when:

(a) Oregon has jurisdiction to modify; and

(b) The administrator receives a written request for modification based upon a change of circumstances and at least 60 days have passed from the date the existing support order was entered, except for those cases where a review is requested pursuant to subsections (3)(c)(A) or (H); and

(c) At least one of the following criteria are met:

(A) A change in the physical custody of the child(ren) or a change in the written parenting time agreement or order has taken place;

(B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;

(C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;

(D) Veterans' benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;

(E) Survivors' and Dependents' Education Assistance benefits received by the child or on behalf of the child were not previously considered in the order;

(F) Since the date of the last order, the obligor has been incarcerated, as defined in OAR 137-055-3300;

(G) The needs of the child(ren) have changed; or

(H) There is a need to provide health care coverage for the child(ren).

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(d) And the requesting party:

(A) Completes a written request for modification based upon a substantial change of circumstances;

(B) Pursuant to ORS 416.425(6), provides appropriate documentation for the criteria in subsection (c) of this section showing that a substantial change of circumstances has occurred; and

(C) Completes a Uniform Income Statement or Uniform Support Affidavit.

(4) Upon receipt of a written request for a review and modification, the administrator will notify the non-requesting party of the review in writing and provide a copy of the notice to the requesting party. The notice will inform the parties:

(a) Of the opportunity to provide information, with regard to themselves and the other party if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;

(b) That the administrator will consider written information received from any party prior to calculating the presumed correct amount of support;

(c) That the administrator will not conduct a review or calculate a presumed correct child support amount until 30 days have passed since the date of the notice unless documentation or written information is received from both the obligor and obligee before the 30 days have passed; and

(d) That a modification to the support amount will affect only support owing on or after the date of service on the last non-requesting party.

(5) If a review is requested due to one of the criteria in paragraphs (3)(c)(B) through (3)(c)(G), the existing support amount must be shown to not be in substantial compliance with the guidelines.

(6) If the conditions in sections (3) and (5) of this rule have not been met the administrator will notify the requesting party in writing within 30 days that:

(a) The administrator denies the request for the filing of a motion for modification; and

(b) The party may use a motion for modification as provided for in ORS 416.425. The administrator will advise the party on how to obtain the Oregon Judicial Department packet which has been prescribed for this purpose.

(7) If the conditions in sections (3) and (5) have been met, the administrator will:

(a) Initiate a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(b) Advise the parties in writing of the presumed correct support amount under the child support guidelines. This notification:

(A) Must be by service of a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(B) Must advise the parties that each party has 30 days from the date of service of the notice to object to the proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has elapsed; and

(C) Must include the request for hearing form for each of the parties as provided in OAR 137-055-2160, if the administrator uses an administrative motion form.

(8) If a party wishes to object to the proposed modification, the party must file a written request for hearing with the administrator or court before the 30 day period has passed.

(9) Upon receipt of a written request for hearing opposing the proposed modification, the administrator will:

(a) Review the case to determine whether the support should be recalculated and, if so, notify both parties of the new presumed amount;

(b) Seek a consent order; or

(c) Ensure that the matter is set for hearing if no other resolution is achieved.

(10) If a party submits, in writing, newly acquired information after a proposed modification has been served, the administrator will review the case pursuant to subsection (9)(a).

(11) If no request for hearing is filed within the 30 day period, the administrator will submit the modification of the support order to the circuit court for entry in the court register.

(12) An appeal under this rule will be as provided in ORS 416.427.

(13) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

(14) If a request for review and modification is received because a change in the physical custody of the child(ren) has taken place, a party

may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.

Stat. Auth.: ORS 416.455, 180.345

Stats. Implemented: ORS 25.080, 25.287, 107.135, 416.425

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-3485

Establishment or Modification When Child Approaching or Past 18th Birthday

(1) Notwithstanding the provisions of OAR 137-055-3420 and 137-055-3430, the administrator will, upon request of a party, or upon its own initiative, initiate establishment of a support order or a modification of a support order when a child is approaching his/her 18th birthday if it will result in four months or more of child support. For purposes of this rule child support includes past support, current support and/or support for the time a child is expected to be a "child attending school" pursuant to ORS 107.108

(2) Upon application or referral, the administrator will only initiate establishment of a support order or establishment of paternity before a child's 18th birthday. As long as legal proceedings are initiated before a child's 18th birthday, they may continue after the child's 18th birthday.

(3) Upon application, the administrator will initiate modification of an existing support order while a child is a "child attending school" if it will affect four months or more of child support as described in section (1).

(4) Upon request the administrator will initiate a modification to zero or a termination of support up to one month before a child's 18th birthday or if the child is a "child attending school" up to one month before the child's 21st birthday.

Stat. Auth.: ORS 25.080, 180.345, 416.430

Stats. Implemented: ORS 25.010, 25.080; 25.287, 107.105, 107.108, 107.135, 109.100, 109.510, 109.704, 110.303, 416.425, 416.455, 418.001, 418.035, 419C.590, 419B.400

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-4120

Alternative Payment Method

(1) If an exception to income withholding has been granted when support is accruing because the child(ren) is in the custody of DHS or OYA as provided in ORS 416.417, an alternative payment method may be any method of paying support allowable pursuant to OAR 137-055-5020, except electronic payment withdrawal (EPW).

(2) Except as provided in section (1), for all cases receiving support enforcement services under ORS 25.080, the only alternative method of paying support to income withholding is through electronic payment withdrawal from the obligor's bank account as described in OAR 137-055-5020.

(3) The administrator may allow payment by EPW if:

(a) The obligor qualifies for an exception to income withholding as provided in OAR 137-055-4080 or 137-055-4110;

(b) The obligor submits a completed application for EPW;

(c) The obligee consents to payment by EPW; and

(d) The obligor continues to pay the amount due for current support each month until DCS activates the EPW payment method on the case.

(4) The administrator will not continue to forward a request for consent to the obligee if the obligee has failed to consent at any time within the previous six months.

(5) An alternative payment method will remain in effect:

(a) Regardless of any subsequent modifications to the child support order, provided the obligor pays off any arrears resulting from the modification within 30 days of when the administrator codes the modification onto the case record, unless a court orders otherwise.

(b) Until the case qualifies for initiated income withholding as provided in OAR 137-055-4100, including cases where the arrears result because the obligor's financial institution refuses to honor an EPW payment, when presented for payment by DCS, due to insufficient funds in the obligor's account.

Stat. Auth.: ORS 25.396, ORS 25.427, 180.345

Stats. Implemented: ORS 25.396

Hist.: AFS 24-1991, f. 11-26-91, cert. ef. 12-1-91; AFS 29-1992, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 30-1994, f. 12-29-95, cert. ef. 1-1-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0178; AFS 14-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4120; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-5030

Receipting of Support Payments

(1) For purposes of this rule, receipt means to officially acknowledge and credit an amount of money to an account.

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(2) When support payments are to be made to the Department of Justice in accordance with ORS 25.020, the State Disbursement Unit (SDU) is the official receipting unit of the Child Support Program. All payments will be disbursed after receipt by the SDU pursuant to 45 CFR 302.32.

(3) Support payments will only be received by the SDU. Under limited circumstances, offices of the Oregon Child Support Program, other than the facility which houses the SDU, may accept child support payments in-person or by mail. If a payment is made in-person, and if requested, an employee may provide an acknowledgment that the payment has been accepted.

(4) Physical access to all areas where support payments of currency, checks, and other negotiable instruments are stored or processed will be limited to employees assigned to handle or accept support payments or if by the SDU, handle or receipt support payments.

(5) Support payments must be physically secured. At least two employees must be present when support payments are not secured in a locked area or in a safe.

(6) To the greatest extent possible, employees will not participate in more than one area of payment processing which would permit them to conceal the misuse of support payments. Specific segregation of duties includes:

(a) Opening mail that contains support payments, preparing batches, running an adding machine tape or electronic spreadsheet of checks in a batch and creating a batch on the system;

(b) Posting the batch, including unidentified payments;

(c) Depositing the payments;

(d) Preparing daily and monthly reconciliations; and

(e) Working unidentified payments.

(7) Support payments will be properly recorded and tracked. Procedures will include:

(a) A method to track support payments which must be researched due to insufficient information to process; and

(b) A review by a leadworker or manager of all changes made to tracking logs to ensure that the corrections are appropriate.

(8) Support payments which have been received by the SDU will be reconciled daily with system transaction totals, including support payments diverted for additional research or special handling.

(9) Support payments will be deposited within 48 hours even if the proper disposition of the support payment is uncertain.

(10) Pursuant to ORS 73.0114, if an employee of the SDU notices contradictory terms on a negotiable instrument, the amount to be received will be the amount written in words.

(11) Pursuant to ORS 73.0401, if a negotiable instrument is not signed, the person is not liable for the instrument. Therefore, if an employee of the SDU notices that a negotiable instrument is not signed, the instrument will be returned for a signature and not receipted.

(12) If, under limited circumstances, an office other than the SDU accepts in-person support payments of checks or other negotiable instruments, the office will:

(a) Inform the individual that future support payments are to be made to the SDU;

(b) Provide an envelope pre-addressed to the SDU for the individual and have the individual put the support payment in the envelope and seal the envelope;

(c) Provide a written acknowledgment of acceptance on a form prescribed by the SDU if the individual requests a receipt;

(d) Narrate the support case with the payment information that includes the check number, the check amount, the payer's name, and how the payment was forwarded to the SDU; and

(e) Send the payment by regular mail to the SDU the same day it is received; or

(f) If the payment is received too late in the day to be mailed the same day, the payment will be locked in a secure location and mailed by regular mail to the SDU the next business day.

(13) If a support payment is received by mail in an office of the Oregon Child Support Program other than the SDU, the office will:

(a) Narrate the support case with the payment information that includes the check number, the check amount, the payer's name, and how the payment was forwarded to the SDU;

(b) Send the payer a notice stating that future support payments must be made to the SDU; and

(c) Send the payment by regular mail to the SDU the same day it is received; or

(d) If the payment is received too late in the day to be mailed the same day, the payment will be locked in a secure location and mailed by regular mail to the SDU the next business day.

(14) In-person currency payments for support will not be accepted by an office of the Oregon Child Support Program other than the facility which houses the SDU. The office will inform the individual of the requirement to pay through the SDU by check or money order and may provide an envelope pre-addressed to the SDU.

(15) Notwithstanding section (14) of this rule, currency payments for support may be accepted by an employee of an office of the Oregon Child Support Program other than the facility which houses the SDU when:

(a) The currency payment is received in court as a result of a court hearing for non-payment of support; or

(b) The currency payment is received in an office that employs strict internal currency handling standards pursuant to sections (5) through (7) of this rule;

(c) The office has the payment deposited to an approved bank account; and

(d) The office ensures the currency payment is transmitted to the SDU immediately for receipting and disbursement.

(A) The office may transmit the payment to the SDU by an electronic fund transfer (EFT) through an approved bank account; or

(B) The office may mail a check to the SDU for the total amount of the payment(s).

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020, 73.0114, 73.0401

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-5040

Accrual and Due Dates

(1) As used in this rule, "payment due date" means the due date or beginning pay date of an installment of support or, if no such date is listed, the date the administrative order or judgment document states it is effective.

(2) For any judgment document or administrative order requiring the payment in installments of child support or child and spousal support through the Division of Child Support (DCS), in accordance with ORS 25.020, this rule delineates the manner in which DCS will determine billing and accrual cycles.

(3)(a) When a support award does not specify the payment due date DCS will consider the payment due date to be the date listed in the administrative order or judgment document;

(b) When a support award or administrative order or judgment document specifies payments are to be made more frequently than monthly, DCS will consider the last payment due date listed in the month to be the payment due date.

(4) When neither the support award nor the administrative order or judgment document contains the payment due date:

(a) If the administrative order or judgment document is a modification of a support order, DCS will consider the payment due date to be same as the existing support order;

(b) If the administrative order or judgment document is not a modification of a support order, DCS will consider the payment due date to be the last day of the month in which the administrative order or judgment document was signed.

(5) If an administrative order or judgment document is a modification of a support order:

(a) The support obligation will not be pro-rated for the month in which the payment due date falls, unless the administrative order or judgment document provides otherwise;

(b) If the modification payment due date is on or before the payment due date of the existing support order, the installment due for that month will be changed to the new amount;

(c) If the modification payment due date is after the payment due date of the existing order:

(A) If the order or judgment is signed prior to the payment due date of the existing support order, the installment due for that month will be changed to the new amount;

(B) If the order or judgment is signed after the payment due date of the existing support order, the installment due will be changed to the new amount effective the following month.

(6) When the support obligation terminates during any month, the support obligation will not be pro-rated for the month, unless the order for support provides otherwise. In any month:

(a) If the support obligation terminates on or before the payment due date for the month, no installment will be due for that month.

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(b) If the support obligation terminates after the payment due date for the month, the entire monthly installment will be due for that month.

(c) If the support award specifies that payments are due on a basis other than monthly, such as weekly, bi-weekly, or semi-monthly, the provisions of subsections (a) and (b) will apply to the specified payment period rather than monthly.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020 & 25.080
Hist.: AFS 77-1982, f. 8-5-82, ef. 9-1-82; AFS 93-1982, f. & ef. 10-18-82; AFS 15-1988, f. & cert. ef. 2-24-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0040; AFS 31-1992, f. 10-29-92, cert. ef. 11-1-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0080; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5040; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-5045

Inconsistent Provisions: Body of Order and Support or Money Award

(1) If the administrator discovers that the support provisions in the body of an administrative order or judgment document are inconsistent with the support or money award (hereinafter "award"), the administrator will:

(a) On a case in which the Division of Child Support (DCS) is providing distribution only services, send a courtesy notice regarding the inconsistency to all parties;

(b) On a case in which services are being provided under ORS 25.080 but the award was not entered by the administrator, send a written notice to all parties to request correction of the error. The notice will advise the parties that until DCS is provided with a copy of the court corrected judgment and award, their support case will be enforced:

(A) As recorded on the judgment register Oregon Judicial Information Network (OJIN), or

(B) If OJIN does not reflect information necessary to proceed, as recorded on the money award;

(c) On a case in which services are being provided under ORS 25.080 and the award was entered by the administrator, file a motion to correct the error. Until the error is corrected, the support case will be enforced

(A) As recorded on the judgment register OJIN, or

(B) If OJIN does not reflect information necessary to proceed, as recorded on the money award.

(2) Notwithstanding subsection (1)(b) of this rule, the administrator may instead file a motion to correct the error if the child support rights, as defined in ORS 25.010, have been assigned to the state.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020 & 25.080
Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-5110

Child Attending School Definitions

As used in OAR 137-055-5120 and 137-055-5125, the following terms have the meanings outlined below:

(1) "Child attending school" means a child of the parties who is unmarried, is 18 years of age or older and under 21 years of age and is a student regularly attending school. Unless the child otherwise qualifies as a child attending school, a child attending school does not include:

(a) A member of the Army, Navy, Air Force, Marine Corps, or Coast Guard (collectively known as the "armed forces") who is serving on active duty; or

(b) A member of the National Guard who is serving full-time National Guard duty.

(2) "Normal break" means:

(a) Summer semester or term;

(b) The period of time between graduation from or completion of high school and the beginning of the next regularly scheduled term, semester, or course of study at a school;

(c) The period of time between the end and beginning of regularly scheduled consecutive school semesters, terms, or courses of study; or

(d) Any other scheduled break between courses of study that is defined by the school as a normal break.

(3) "Quarterly" means annual quarters ending on March 31, June 30, September 30, and December 31. This is the reporting schedule the Child Support Program may require for a child who is attending a school which does not have traditional terms or semesters, or has courses which last longer than six months.

(4) "Regularly attending" means the child is enrolled in an educational course load of at least half-time as defined by the school.

(5) "School" means any of the following:

(a) An educational facility such as a high school, community college, four-year college, or university;

(b) A course of vocational or technical training, including Job Corps, designed to fit the child for gainful employment;

(c) A high school equivalency course, including (but not limited to), a General Educational Development (GED) program; or

(d) A school in grade 12 or below, including home schooling.

(6) "Termination of official accounting functions" means the Division of Child Support shall cease to perform billing, accrual, distribution, and record-keeping functions for ongoing support with regard to the child attending school. If the order is a class order and there is an additional child(ren) for whom ongoing support is still ordered, termination of official accounting functions means:

(a) Any support paid directly to such child will cease and will be redirected to the obligee; and

(b) Support accrual for such child will be prorated to the other child(ren) for whom ongoing support is still ordered.

Stat. Auth.: ORS 25.020, 180.345
Stats. Implemented: ORS 25.020, 107.108

Hist.: AFS 23-2001, f. 10-2-01, cert. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-5510

Request for Credit Against Child Support Arrears for Physical Custody of Child

(1) In accordance with ORS 416.425, the administrator may allow a credit against child support arrearages for periods of time during which the obligor has physical custody of the child(ren) when:

(a) Physical custody was pursuant to a court ordered parenting time schedule and the court order specifically states that the obligor is allowed a credit for parenting time that is not already factored into the monthly child support amount;

(b) Physical custody was with the knowledge and consent of the obligee; or

(c) The obligor has custody of the child(ren) pursuant to court order.

(2) A request for credit against child support arrears under this rule must be made in writing either:

(a) If the credit is requested for a time period immediately prior to the effective date of the modification; or

(b) Independently of a request for modification, for any time period within two years prior to the date of the request.

(3) Credit for physical custody may only be given if the child(ren) is/are with the obligor for 30 consecutive days or the entire month for which credit is sought. When the obligor is seeking a credit for less than all of the children under a child support order, a credit may only be given if the order is not a class order as defined in OAR 137-055-1020.

(4) Notwithstanding section (3), the credit may only be allowed to the extent it will not result in a credit balance, as defined in OAR 137-055-3490(1).

(5) The administrator shall send to the parties by regular mail or by service as part of the modification action, notice and proposed order of the intended action, including the amount to be credited. Such notice shall inform the obligor and obligee that:

(a) The obligor and/or obligee, within 30 days from the date of this notice, may request an administrative hearing;

(b) The request for hearing must be in writing;

(c) The only basis upon which the obligor or obligee may object is that:

(A) The obligor did not have physical custody of all the child(ren) under the support order for the time periods requested;

(B) The obligor had physical custody of the child(ren), but the custody was not with the knowledge and consent of the obligee and the obligor does not have legal custody of the child(ren);

(C) The obligor had physical custody of the child(ren) pursuant to a court order for parenting time and the order does not allow the obligor a credit for periods of parenting time.

(6) Any appeal of the decision made by an administrative law judge shall be to the circuit court for a hearing de novo.

(7) If a credit is allowed pursuant to this rule, the credit shall be applied as follows:

(a) If none of the arrears are assigned to the state, the credit shall be applied to the family's unassigned arrears;

(b) If there are arrears assigned to the state and the child was receiving assistance during any time period for which the obligor had physical

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custody of the child(ren), the credit shall be applied in the following sequence:

(A) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(B) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(C) Family's unassigned arrears;

(D) Family's conditionally assigned arrears.

(c) If there are arrears assigned to the state and the child was not receiving assistance during any time period for which the obligor had physical custody of the child(ren), the credit shall be applied in the following sequence:

(A) Family's unassigned arrears;

(B) Family's conditionally assigned arrears;

(C) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(D) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance.

(d) The terms used in this section are as defined in OAR 137-055-6020.

Stat. Auth.: ORS 180.345 & 416.455

Stats. Implemented: ORS 416.425

Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-6020

Application and Distribution of Support Payments

(1) For purposes of this rule, the following definitions apply:

(a) "Assistance" means cash assistance under Temporary Assistance for Needy Families (TANF) program, or foster care maintenance payments provided by the Department of Human Services (DHS), or cost of care provided by the Oregon Youth Authority (OYA).

(b) "Current support" is the monthly support amount ordered by a court or administrative process for the benefit of a child and/or a former spouse.

(c) "Family's conditionally-assigned arrears" is past-due support that accrues during non-assistance periods, and was not permanently assigned under pre-October 1997 assignments, which revert back to the family on either October 1, 2000, if the family terminates assistance prior to October 1, 2000, or on the date the family leaves the assistance program if on or after October 1, 2000. Family's conditionally-assigned arrears revert to state's temporarily-assigned arrears during periods that the family receives assistance.

(d) "Family's unassigned arrears" is past-due support which accrues after the family's most recent period of assistance, or at any time in the case where a family has never received assistance.

(e) "Family's unassigned arrears during assistance period" is past-due support which accumulates while a family receives assistance and exceeds the total amount of unreimbursed assistance paid to the family.

(f) "Future support" is an amount received which represents payment on current support for future months.

(g) "State's permanently-assigned arrears" is:

(A) Past-due support which accrues during the period the family receives assistance and past-due support which accrued before the family applied for assistance in pre-October 1997 assignments only; or

(B) Advance payments owed to the State of Oregon under OAR 137-055-6210.

(h) "State's temporarily-assigned arrears" is past-due support assigned to the state during assistance periods, but which accrued during non-assistance periods, and were not permanently assigned under pre-October 1997 assignments. As of October 1, 2000, state's temporarily-assigned arrears revert to family's conditionally-assigned arrears during periods that the family is not receiving assistance.

(i) "Unreimbursed assistance" means the cumulative amount of assistance paid to a family or on behalf of a child(ren) for all months which has not been recovered by assigned support collections. The total amount of unreimbursed assistance that may be recovered is limited by the total amount of the assigned support obligation.

(2) Whenever support payments are assigned to the state, the state share of the payments will be either:

(a) Distributed to DHS if funds were expended to provide foster care assistance to the family;

(b) Distributed to OYA if funds were expended by OYA to provide care to a member of the family; or

(c) Retained by the Department of Justice (DOJ) if funds were expended to provide TANF cash assistance to the family.

(3) Whenever support payments are assigned to a Tribe, the Tribe's share of the payments will be distributed to the Tribe as provided in 42 USC 657.

(4) Table 1 is included in this rule as an aid in understanding the arrears types defined in section (1) of this rule. [Table not included. See ED. NOTE.]

(5) DOJ will distribute support payments to the family within two business days after receipt if sufficient information identifying the payee is provided, except as follows:

(a) Support payments received as a result of tax refund intercepts will be distributed within thirty calendar days of receipt or, if applicable, within fifteen calendar days of an administrative review or hearing. If the state is notified by the Secretary of the U.S. Treasury (the Secretary) or the Oregon Department of Revenue (DOR) that an offset on a non-assistance case is from a refund based on a joint return, distribution may be delayed, up to a maximum of six months, until notified by the Secretary or DOR that the obligor's spouse has been paid their share of the refund.

(b) Support payments received from a garnishment, issued pursuant to ORS Chapter 18, will be held for 40 days if the garnishee is making a payment of other than wages or 120 days if the garnishee is making a payment of wages unless the obligor waives the right to make a challenge to a garnishment as set out in OAR 137-055-4520 or, if the obligor or any person who has an interest in the garnished property makes a challenge to garnishment, the support payment will be held pending the court decision;

(c) Support payments for future support, per section (19) of this rule; or

(d) Support payments for less than five dollars may be delayed until a future payment is received which increases the payment amount due the family to at least five dollars.

(e) When a check has been dishonored, future support payments paid by personal check from that payor may be held in accordance with OAR 137-055-6240;

(f) When an obligor contests an order to withhold, funds will be disbursed pursuant to OAR 137-055-4160(5).

(6) DOJ may send support payments designated for the obligee to another person or entity caring for the child(ren); however, prior to doing so, DOJ will require a notarized statement of authorization from the obligee or a court order requiring such distribution. DOJ will change the payee to a private collection agent that the obligee has retained for support enforcement services only in accordance with OAR 137-055-6025.

(7) Child support and spousal support have equal priority in the distribution of payments.

(8) For Oregon support orders or modifications entered on or after October 4, 1997, a prorated share (unless otherwise ordered) of current support payments received within the month due will be distributed directly to the child qualified as a child attending school per ORS 107.108 and OAR 137-055-5120. Any arrears resulting from unpaid current support is a judgment owing to the obligee as the judgment creditor.

(9) If the obligor has a current support obligation for multiple children on a single case, those children have different assistance status and the order does not indicate a specified amount per child, current support payments will be prorated based upon the number of children and their assistance status. Support payments in excess of current support for these cases will be distributed as provided in subsections (15)(b) through (e) of this rule. For example, the obligor has a current support obligation for three children of \$300 per month. One child is not receiving assistance, one child is receiving cash assistance under the TANF program, and foster care maintenance payments are being made on behalf of the third child. A \$300 current support payment would be allocated as follows:

(a) \$100 to the family on behalf of the child not receiving assistance;

(b) \$100 to DOJ on behalf of the child receiving cash assistance under the TANF program not to exceed the amount of unreimbursed assistance; and

(c) \$100 to DHS for the foster care maintenance payments being made on behalf of the third child.

(10) Notwithstanding any other provisions of this rule, support payments received on behalf of an obligor with an open bankruptcy case will be allocated and distributed as directed by the bankruptcy trustee, the obligor's bankruptcy plan and in accordance with federal bankruptcy law.

(11) DOJ will retain the fee charged by the Secretary for cases referred for Full Collection Services per OAR 137-055-4360 from any amount subsequently collected by the Secretary under this program. DOJ will credit the obligor's case for the full amount of collection and distribute the balance as provided in sections (13) through (15) as applicable.

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(12) Within each arrears type in the sequence of payment distribution in sections (13) through (17) of this rule, DOJ will apply the support payment to the oldest debt in each arrears type.

(13) DOJ will distribute support payments received on behalf of a family who has never received assistance to the family, first toward current support, then toward support arrears, not to exceed the amount of arrears.

(14) DOJ will distribute support payments received on behalf of a family receiving assistance in the following sequence:

(a) Current support to the state, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(b) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(c) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(d) Family's unassigned arrears during assistance period unless the state is making foster care maintenance payments on behalf of the child(ren);

(e) If the state is making foster care maintenance payments on behalf of the child(ren), support payments in excess of unreimbursed assistance, up to the total support obligation owed, will be reported as excess and be paid to DHS to be used in the manner it determines will serve the best interests of the child(ren).

(15) DOJ will distribute support payments received on behalf of a family who formerly received assistance in the following sequence:

(a) Current support to the family;

(b) Family's unassigned arrears;

(c) Family's conditionally-assigned arrears;

(d) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance;

(e) Family's unassigned arrears during assistance period.

(16) Notwithstanding any other provisions of this rule, DOJ will distribute support payments received from federal tax refund intercepts in the following sequence:

(a) Fee charged by the Secretary. Despite the fee, DOJ must credit the obligor's case for the full amount of collection. If any portion of the federal tax refund intercept payment will be applied to subsection (b), (c), or (d) of this section, the fee will be paid by DOJ;

(b) State's permanently-assigned arrears as defined in paragraph (1)(g)(A) of this rule, not to exceed the amount of unreimbursed assistance;

(c) State's permanently-assigned arrears as defined in paragraph (1)(g)(B) of this rule;

(d) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance;

(e) Family's conditionally-assigned arrears. However, federal tax refund intercepts applied to family's conditionally-assigned arrears must be retained by the state, not to exceed the amount of unreimbursed assistance;

(f) Family's unassigned arrears;

(17) Notwithstanding any other provisions of this rule, DOJ will distribute support payments received from state tax refund intercepts in the following sequence:

(a) Fee charged by the DOR. Despite the fee, DOJ must credit the obligor's case for the full amount of collection. If any portion of the state tax refund intercept payment will be applied to subsections (e), (f) or (g) of this section, the fee will be paid by DOJ;

(b) Current support;

(c) Family's unassigned arrears;

(d) Family's conditionally assigned arrears;

(e) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(f) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(g) Parentage testing fee.

(18) Any excess funds remaining after arrears are paid in full will be processed as provided in OAR 137-055-6260 unless the obligor has elected in writing to apply the credit balance toward future support as provided in section (19) of this rule.

(19) DOJ will distribute support payments representing future support on a monthly basis when each such payment actually becomes due in the future. No amounts may be applied to future months unless current support and all arrears have been paid in full.

(20) When an obligor has multiple support cases, the distribution sequence for each case is set out in sections (13) through (17), but DOJ will allocate support payments to each of the multiple cases as follows:

(a) When an income withholder remits a single payment that is a combined payment intended to comply with more than one income withholding order against the obligor, but the obligor's income is not sufficient for the withholder to fully comply with each order to withhold income issued pursuant to ORS Chapter 25, DOJ will allocate the amount received as follows:

(A) If the amount is not sufficient to pay the current support due on all of the obligor's support cases for which an order to withhold is in effect, each withholding case will receive a proportionate share of the total amount withheld. For each case, DOJ will determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases for which an order to withhold is in effect, and then multiplying the resulting percentage by the total amount withheld.

(B) If the amount withheld from the obligor's income is sufficient to pay the current support due on all cases, but is not enough to fully comply with the order to withhold on all cases where arrears are owed, the amount received will be allocated as follows:

(i) Current support to each withholding case;

(ii) Equally to each withholding case where arrears are owed. However, no case may receive more than the maximum allowable withholding amount for that case pursuant to ORS 25.414 or, as appropriate, under an expanded income withholding pursuant to ORS 25.387. Any remaining funds will be equally distributed to the obligor's other cases. No case may receive more than the total amount of current support and arrears owed on that case at the time this distribution is made.

(b) When support payments received from federal tax refund intercepts are not sufficient to pay the full arrears amount on each case certified for federal tax offset, DOJ will allocate the amount received as follows:

(A) If the total amount received is not sufficient to pay the state's permanently-assigned arrears on all of the obligor's certified cases, each certified case will receive an equal share. However, no case may receive more than the state's permanently-assigned arrears on that case.

(B) If the total amount is sufficient to pay the state's permanently-assigned arrears on all certified cases, but is not enough to pay in full all the state's temporarily-assigned arrears on all of the obligor's certified cases, the amount received will be allocated as follows:

(i) State's permanently-assigned arrears to each certified case;

(ii) An equal share of the remaining funds for each certified case. However, no case may receive more than the state's temporarily-assigned arrears on that case.

(C) If the total amount is sufficient to pay the state's permanently assigned arrears and the state's temporarily-assigned arrears on all certified cases, but is not enough to pay in full the family's arrears on all of the obligor's certified cases, the amount received will be allocated as follows:

(i) State's permanently-assigned arrears to each certified case;

(ii) State's temporarily-assigned arrears to each certified case;

(iii) An equal share of the remaining funds for each certified case. However, no case may receive more than the total amount of arrears owed on that case at the time this distribution is made.

(c) When support payments received from state tax refund intercepts are not sufficient to pay the current support and full arrears amount on each case certified for state tax offset, DOJ will allocate the amount received as follows:

(A) If the total amount received is not sufficient to pay the current support due on all of the obligor's certified cases, each certified case will receive a proportionate share of the total amount received. For each case, DOJ will determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases certified for state tax offset, and then multiplying the resulting percentage by the total amount received.

(B) If the total amount received is sufficient to pay the current support due on all cases but is not sufficient to pay in full the family's arrears (both conditionally and unassigned arrears) on all of the obligor's certified cases, each certified case will be allocated an equal share. However, no case may receive more than the arrears amount due the family on that case at the time this distribution is made.

(C) If the total amount is sufficient to pay the family's arrears (both conditionally and unassigned arrears) on all certified cases, but is not enough to pay in full all the state's permanently-assigned arrears on all of the obligor's certified cases, the amount received will be allocated as follows:

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(i) Family's arrears (both conditionally and unassigned arrears) on all certified cases;

(ii) An equal share of the remaining funds for each certified case toward state's permanently-assigned arrears. However, no case may receive more than the state's permanently-assigned arrears on that case.

(D) If the total amount received is sufficient to pay both the family's arrears and the state's permanently-assigned arrears, but not sufficient to pay the state's temporarily-assigned arrears on all of the obligor's certified cases, the amount received will be allocated as follows:

(i) Family's arrears (both conditionally and unassigned arrears) on all certified cases;

(ii) State's permanently-assigned arrears on all certified cases;

(iii) An equal share of the remaining funds toward state's temporarily-assigned arrears. However, no case may receive more than the state's temporarily-assigned arrears on that case.

(E) Any remaining funds may be applied toward parentage testing fee.

(d) DOJ will allocate support payments made by personal check, money order, or cash as provided in subsection (20)(g) of this rule unless the obligor designates in writing at the time of payment the amounts to be allocated to each case. DOJ will apply payments in excess of current support and arrears toward future support as provided in section (19) of this rule.

(e) DOJ will allocate support payments to one case, rather than proportionately, when:

(A) The support payment resulted from a garnishment, issued pursuant to ORS chapter 18, on a particular case; or

(B) The support payment resulted from the sale or disposition of a specific piece of property against which a court awarded a specific obligee a judgment lien for child support; or

(C) The support payment resulted from a contempt order in a particular case; or

(D) Any other judicial order that requires distribution to a particular case.

(f) When a single writ of garnishment is issued for two or more cases as provided in ORS 18.645, DOJ will allocate support payments only among the cases listed in the writ of garnishment and in the manner provided in subsection (20)(g) of this rule.

(g) DOJ will allocate all other support payments received as follows:

(A) If the total amount is not sufficient to pay the current support due on all of the obligor's support cases, each case will receive a proportionate share of the total amount received. For each case, DOJ will determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases, and then multiplying the resulting percentage by the total amount received.

(B) If the amount received is sufficient to pay the current support due on all cases, but is not enough to pay in full all cases where arrears are owed, the amount received will be allocated as follows:

(i) Current support to each case;

(ii) Equally to each case where arrears are owed. However, no case may receive more than the total amount of current support and arrears owed on that case at the time this distribution is made. Any remaining funds will be equally distributed to the obligor's other cases.

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

Stat. Auth.: ORS 25.020, 25.610, 180.345

Stats. Implemented: ORS 18.645, 25.020, 25.150, 25.414 & 25.610

Hist.: PWC 851(Temp), f. & ef. 8-11-77; Renumbered from 461-004-0518; AFS 3-1978, f. & ef. 1-6-78; AFS 88-1980, f. & ef. 12-10-80; AFS 23-1987(Temp), f. 6-19-87, ef. 7-1-87; AFS 60-1987, f. & ef. 11-4-87; AFS 31-1989, f. 6-6-89, cert. ef. 6-9-89; Renumbered from 461-035-0003; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0410; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0248; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-6210

Advance Payments of Child Support

(1) "Advance payment" means:

(a) The Department of Justice (DOJ) has transmitted money to an obligee or to a person or entity authorized to receive support payments;

(b) The amount does not exceed the total arrears available for assignment to the state;

(c) DOJ has applied the money incorrectly through no fault or error of the obligee; and

(d) The payment is not the result of a dishonored check submitted by an employer.

(2) The person who receives an advance payment owes the amount of the advance payment to DOJ.

(3) Instead of directly collecting the amount of the advance payment from the person who received it, the amount will be removed from the arrears owed to the obligee and will be assigned to the state as permanently-assigned arrears under OAR 137-055-6020. DOJ will notify the obligee in writing of the:

(a) Amount to be collected as permanently-assigned arrears; and
(b) Right to challenge the determination by judicial review under ORS 183.484.

(4) Notwithstanding the provisions of section (3) of this rule, designation of permanently-assigned arrears to recover advance payments does not affect whether a case is assigned to DOJ as provided in OAR 137-055-2020 or a district attorney office as provided in OAR 137-055-2040.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-6220

Recovery of Overpayments on Support Accounts

(1) A child support overpayment in favor of the State of Oregon is created when the Department of Justice (DOJ) has transmitted money to an obligee, to a person or entity authorized to receive support payments or to an obligor and that amount:

(a) Was transmitted in error; and

(b) Does not qualify as an advance payment under OAR 137-055-6210; or

(c) Does not qualify as payment for future support under OAR 137-055-6020(19).

(2) DOJ will determine a threshold amount for which attempts to recover the overpayment will occur. In determining the threshold, DOJ will consider the cost of:

(a) Staff time in processing the overpayment collection request; and

(b) An administrative hearing and the average number of cases requesting a hearing.

(3) When an overpayment meets the threshold established by DOJ, except as provided in section (7) of this rule, the notice requirements, contest and appeal rights set out in ORS 25.125(3) and sections (4) through (6) of this rule apply.

(4) When a notice is issued to an obligee under section (3) of this rule, DOJ will include a statement that the obligee:

(a) Must respond within 14 days from the date of the notice to object and request an administrative hearing; and

(b) May voluntarily assign any future support to repay the overpayment.

(5) If the obligee files a written objection or request for hearing within 14 days, an administrative law judge shall then hear the objection.

(a) An order by an administrative law judge is final.

(b) The obligee may appeal the decision of an administrative law judge to the circuit court for a hearing de novo. The appeal shall be by a petition for review, filed within 60 days after the date that the final hearing order has been mailed to the obligee.

(6) If an obligee fails to file a written objection or request for hearing, fails to voluntarily assign future support, or if an order setting the overpayment amount is received from an administrative law judge, DOJ will refer the overpayment for collection from the obligee as provided in ORS 293.231.

(7) If the reason for the overpayment is a dishonored check submitted by the obligor, the notice requirements of ORS 25.125(5) and sections (8) through (11) of this rule apply.

(8) When a notice is issued to an obligor under section (7) of this rule, DOJ will include a statement that the obligor must respond within 14 days of the date of the notice and request an administrative review.

(9) If the obligor requests an administrative review, DOJ will conduct the administrative review within 30 days after receiving the request and notify the obligor of the results of the review.

(10) The obligor may appeal the result of the administrative review as provided in ORS 183.484.

(11) If the obligor fails to request an administrative review or if the result of an administrative review is that an overpayment occurred, DOJ will refer the overpayment for collection from the obligor as provided in ORS 293.231.

Stat. Auth.: ORS 25.125, 180.345, 293

Stats. Implemented: ORS 25.020, 25.125

Hist.: AFS 23-1983(Temp), f. & ef. 5-18-83; AFS 53-1983, f. 10-28-83, ef. 11-1-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0045; AFS 3-1992, f. 1-31-92, cert. ef. 2-1-92; AFS 16-1997, f. 9-2-97, cert. ef. 10-1-97; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0265;

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DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6220; DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-7180

Order Determining Controlling Order

(1) A determination identifying a single controlling order that will be entitled to prospective enforcement in this and every other state will be made under this rule:

(a) In a proceeding brought under ORS chapter 110 if two or more child support orders have been issued regarding the same obligor, child and obligee; or

(b) Upon the written request of a party which meets the requirements set forth by ORS 110.333.

(2) For purposes of this rule, any order modified or issued after October 20, 1994 (the effective date of the Full Faith and Credit for Child Support Orders Act, 28 USC 1738B), will be interpreted as a modification of all orders issued prior to October 20, 1994, unless:

(a) The tribunal entering the order did not have jurisdiction to do so;

(b) Such order is challenged by a party for lack of personal jurisdiction; or

(c) Such order is challenged by a party for lack of subject matter jurisdiction.

(3) When the administrator cannot assert personal jurisdiction over the individual parties, the request for a controlling order determination will be forwarded to the central registry of the state that can assert personal jurisdiction over the non-requesting party.

(4) When the administrator can assert personal jurisdiction over the parties, the administrator will issue an other than contested case order determining the controlling order. The order will be served upon the parties by certified mail, return receipt requested, at the last known address of the parties. The order will include:

(a) A statement including the basis for personal jurisdiction over the parties;

(b) A statement of the name of the parties and the name of the dependent child(ren) for whom support was ordered;

(c) A statement of each child support order which was considered, the county and state which issued the order and the date of the order;

(d) A statement of the order which the administrator determined to be the controlling order for prospective support and the basis upon which the tribunal made its determination;

(e) A statement that the controlling order determination is effective on the date the order is issued by the administrator;

(f) A reference to ORS 110.333;

(g) A statement that a party may submit further information and petition the administrator for reconsideration of the order within 60 days of the date of the order;

(h) A statement that OAR 137-004-0080 applies to any petition for reconsideration of the order determining the controlling order issued by the administrator;

(i) A statement that a party who is adversely affected or aggrieved by the order may appeal the order to the circuit court of Marion county or the county in which the petitioner resides or has a principal business office in accordance with ORS 183.484.

(5) When the administrator determines that none of the tribunals would have continuing, exclusive jurisdiction under ORS chapter 110, the administrator will notify the parties in writing of the determination and establish a new child support order which will be the controlling order.

(6) For the purposes of determining the Oregon county in which the administrator may enter the order determining the controlling order, the following provisions apply:

(a) If one or more Oregon court files exist for the same obligor and child, the order will be entered in each existing court file;

(b) If an Oregon court file does not exist, the administrator will enter the documents required by ORS 416.440 in the circuit court in the county where the party who lives in Oregon resides.

(7) Within 30 days after the expiration of the appeal or reconsideration period, the administrator will certify copies of the order determining the controlling order and file one with each tribunal that issued or registered an earlier order of child support.

(8) Upon written receipt of an order determining the controlling order that a tribunal of this or another state properly issued, the administrator will:

(a) Adjust the Oregon case record to cease prospective accrual on any noncontrolling order and initiate accrual on any controlling order which was issued or registered by an Oregon tribunal on the date specified in the

order determining controlling order or, when not specified, in accordance with OAR 137-055-5040; and

(b) When one of the noncontrolling orders was issued by an Oregon tribunal, ensure that the order determining the controlling order is entered in the Oregon circuit court for the county which issued or entered the prior order.

(9) Nothing in this rule may be construed to limit the authority of another tribunal in this or any other state in issuing an order determining a controlling order consistent with applicable laws and procedural rules.

Stat. Auth.: ORS 25.729 180.345

Stats. Implemented: ORS 110.327, 110.333

Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2385; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7180; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7180; DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-7190

Review and Modification In Interstate Cases

(1) Within 15 days of a party's request for a periodic review or a request for a modification based upon a change of circumstances, the administrator will determine in which state the review will be sought. The administrator will follow the Uniform Interstate Family Support Act (UIFSA) provisions in ORS 110.303 through 110.452 in making this decision, including:

(a) If the controlling order is an Oregon support order and the obligor, obligee and child reside in this state, Oregon will be the reviewing state.

(b) If the controlling order is an Oregon support order and one of the parties or the child resides in this state, Oregon will be the reviewing state.

(c) If the child or a party is subject to the personal jurisdiction of this state and all the parties have filed a written consent in the state which issued the order for the Oregon tribunal to modify the order, Oregon will be the reviewing state.

(d) If the administrator has registered another state's order for enforcement and none of the parties or the child resides in the state which issued the order, the state where the non-requesting party resides will be the reviewing state.

(2) If none of the conditions in subsections (1)(a) through (1)(c) of this rule apply and the administrator determines that the reviewing state is not Oregon, it will proceed to:

(a) Determine and obtain the information needed by the reviewing state to permit review;

(b) Complete the federal, standardized interstate transmittal form;

(c) Transmit the documents in subsections (a) and (b) of this section within 20 calendar days of receipt of those documents to the reviewing state;

(3)(a) If the reviewing state is currently providing interstate services for Oregon on this case, the documents will be transmitted to the local office or agency working the case; and

(b) If the request is the first contact with the reviewing state on this case, the request must be sent to the interstate central registry in the reviewing state.

Stat. Auth.: ORS 25.080, 25.287, 180.345

Stats. Implemented: ORS 25.080, 25.287, 110.318, 110.327, 110.330, 110.436

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04

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Department of Oregon State Police Chapter 257

Adm. Order No.: OSP 1-2004(Temp)

Filed with Sec. of State: 7-15-2004

Certified to be Effective: 7-15-04 thru 1-10-05

Notice Publication Date:

Rules Amended: 257-070-0005, 257-070-0010, 257-070-0015, 257-070-0025, 257-070-0040

Subject: Under ORS 181.585 to 181.589, the Oregon State Police (OSP) is authorized to designate unsupervised adult and juvenile sex offenders as predatory sex offenders and to notify the public concerning unsupervised adult and juvenile predatory sex offenders. In designating a person as a predatory sex offender, OSP must use a sex offender risk assessment scale approved by the Department of Corrections (DOC) or a community corrections agency. On May 1, 2004, the Static 99 became the approved risk assessment scale used by the DOC and the State Board of Parole and Post-Prison Supervision to designate persons as predatory sex offenders. Prior to May 1, 2004, OSP used the Department of State Police sex offender risk assessment scale, which was approved by the DOC. On March 16, 2004,

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OSP submitted draft changes to Oregon Administrative Rules (OAR) 257-070-0005 through 257-007-0040 for legal review, which was not completed until May 18, 2004. OSP cannot complete designations of certain persons who meet the criteria as predatory sex offenders and offer them an opportunity for due process until the permanent rules have been amended and certified copies are filed with the Office of the Secretary of State. Approval of the Temporary Rules will authorize OSP to complete these designations in a timely manner until the permanent rules are in place.

Rules Coordinator: David Yandell—(503) 378-3055, ext. 55000

257-070-0005

Statement of Purpose

The purpose of these rules is to implement and interpret ORS 181.585 to 181.608. The Oregon State Police is authorized to adopt rules interpreting and implementing the described statutes. These rules establish standards and procedures for victim and public access to sex offender information and for designation of unsupervised adult and juvenile offenders as predatory sex offenders.

Stat. Auth.: ORS 183.335, 181 & 192.430.

Stats. Implemented: ORS 181.585 - 181.608

Hist.: OSP 3-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; OSP 6-1991, f. & cert. ef. 11-21-91;

OSP 2-1999(Temp), f. & cert. ef. 9-13-99 thru 3-10-00; OSP 3-2000, f. & cert. ef. 7-11-00;

OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05

257-070-0010

Authority

Authority to provide information concerning registered sex offenders to victims is conferred by ORS 181.601. Authority to make information concerning registered sex offenders available to the public is conferred by ORS 181.586 to 181.592. Authority to designate unsupervised adult and juvenile offenders as predatory sex offenders and authority to notify the public concerning predatory sex offenders are conferred by ORS 181.585 to 181.589.

Stat. Auth.: ORS 183.335, 181 & 192.430.

Stats. Implemented: ORS 181.585 - 181.608

Hist.: OSP 3-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; OSP 6-1991, f. & cert. ef. 11-21-91;

OSP 2-1999(Temp), f. & cert. ef. 9-13-99 thru 3-10-00; OSP 3-2000, f. & cert. ef. 7-11-00;

OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05

257-070-0015

Definitions

As used in these rules:

(1) "Predatory sex offender" means a person who has been determined to be predatory under ORS 181.585 to 181.589.

(2) "Registered sex offender" means a person who is required to report and be registered as a sex offender under ORS 181.595, 181.596, or 181.597.

(3) "Sex Offender Web Site" means a site established and maintained on the World Wide Web by the Department of State Police, containing information concerning registered and predatory sex offenders.

(4) "Under supervision for the first time" means that the registered sex offender is serving any period of supervision, whether active or inactive, arising out of the sentence imposed by the court upon the offender's first conviction for a sex crime listed in ORS 181.594, including the following periods of supervision:

(a) In the case of a sentence of probation, the entire period of probationary supervision arising out of the probationary sentence, notwithstanding any periods of custody imposed or served in relation thereto. If probation is revoked and the offender is sentenced to a term of imprisonment, "under supervision for the first time" also includes all periods of supervision arising out of the revocation sentence, including any form of parole or supervised release from incarceration during, and any term of post-prison supervision imposed as part of, the revocation sentence.

(b) In the case of an indeterminate sentence of imprisonment, all periods of supervision arising out of the sentence, including any form of parole or supervised or conditional release from incarceration.

(c) In the case of a determinate sentence of imprisonment, all periods of supervision arising out of the sentence, including any form of supervised or conditional release from incarceration and the term of post-prison supervision imposed as part of the sentence.

(5) "Victim" means a person, or the legal guardian of a person, who is:

(a) The victim of a sex crime listed in ORS 181.594 the commission of which resulted in a conviction, a finding of guilty except for insanity, or a finding that a youth was within the jurisdiction of the juvenile court for an act which, if committed by an adult, would constitute a sex crime; or

(b) Any person who is named in a criminal complaint as a victim of a sex crime listed in ORS 181.594 who in the course of any judicial proceeding is acknowledged by the defendant to be the victim of a sex crime listed in ORS 181.594.

Stat. Auth.: ORS 181.555 & 181.730

Stats. Implemented: ORS 181.585 - 181.608

Hist.: OSP 3-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; OSP 6-1991, f. & cert. ef. 11-21-91;

OSP 3-1994, f. & cert. ef. 8-1-94; OSP 2-1999(Temp), f. & cert. ef. 9-13-99 thru 3-10-00;

OSP 3-2000, f. & cert. ef. 7-11-00; OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05

257-070-0025

Victim Access to Registered Sex Offender Information

(1) A victim shall be issued a victim identification number and shall be given the registry identification number of the registered sex offender who committed the crime against the victim:

(a) At any time, upon request by the victim; and

(b) Upon verification of the identification of the victim.

(2) The Department of State Police has established a toll-free telephone number, 1-800-551-2934, to provide victims with updates on the prison status, release information, parole status and any information concerning the registered sex offender who committed the crime against the victim that is authorized for release under ORS 181.585 to 181.601. The telephone line will be operational 8 a.m. to 5 p.m. Monday through Friday.

Stat. Auth.: ORS 183.335, 181 & 192.430.

Stats. Implemented: ORS 181.585 - 181.608

Hist.: OSP 3-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; OSP 6-1991, f. & cert. ef. 11-21-91;

OSP 2-1999(Temp), f. & cert. ef. 9-13-99 thru 3-10-00; OSP 3-2000, f. & cert. ef. 7-11-00;

OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05

257-070-0040

Designation of Persons as Predatory Sex Offenders; Notice and Opportunity to Be Heard Regarding Designation as Predatory Sex Offender

(1) Under ORS 181.585 to 181.589, the Department of State Police is authorized to designate as predatory sex offenders:

(a) Persons who exhibit characteristics showing a tendency to victimize or injure others and who have been convicted of a sex crime listed in ORS 181.594(2)(a) to (d), convicted of attempting to commit one of those crimes, or found guilty except for insanity of one of those crimes, and who are not under the supervision of the Oregon Department of Corrections or a community corrections agency; and

(b) Persons who are required to report under ORS 181.595, 181.596, or 181.597 after having been found to be within the jurisdiction of the juvenile court for having committed acts that if committed by an adult would constitute sex crimes and who the Department of State Police has designated as predatory after consultation with the person's last primary supervising agency, and who are not under the supervision of the juvenile court.

(2) The Department of State Police will designate persons as predatory sex offenders as provided in ORS 181.585 to 181.589 and this rule.

(3) The Department of State Police will designate a person as a predatory sex offender if the person exhibits characteristics showing a tendency to victimize or injure others and meets the criteria for designation as a predatory sex offender established in the risk assessment scale approved by the Oregon Department of Corrections.

(4) Prior to designating a person as a predatory sex offender, the Department will notify the person in writing of the proposed designation, the basis for the designation and the method for submitting written objections to the proposed designation. The notice will include a copy of the risk assessment scale approved by the Oregon Department of Corrections as scored for that person. The notice of proposed designation will be sent to the person by registered or certified mail.

(5) A person who has received notice under subsection (4) of this rule may submit written objections to the proposed designation. The person must complete and sign the "Objections to Predatory Sex Offender Designation" form provided for that purpose.

(6) In addition to the person's signed "Objections to Predatory Sex Offender Designation" form, a person who has received notice under subsection (4) of this rule may submit other relevant written materials in support of the person's objection to the designation. For the purpose of this rule, "relevant written materials" means documentary evidence that will assist the Department of State Police in determining as a factual matter whether the person meets one or more of the sex offender risk assessment scale criteria upon which the Department of State Police proposes to rely in designating the person as a predatory sex offender. For the purpose of this rule, relevant written materials includes:

(a) A court order reversing, vacating or setting aside a judgment of conviction for a crime;

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Department of Revenue Chapter 150

(b) A court order reversing, vacating or expunging a finding that the person was within the jurisdiction of the juvenile court for committing an act that if committed by an adult would constitute a crime;

(c) An order of pardon for a crime; or

(d) Police reports, pre-sentence investigation reports, court records and transcripts, or other documentary evidence relating to the circumstances of the person's crime or crimes.

(7) The person's signed "Objections to Predatory Sex Offender Designation" form and other relevant written materials, if any, must be received by the Department of State Police within 35 days of the date of the Department of State Police notice of proposed designation provided under subsection (4) of this rule.

(8) The Department of State Police will consider materials submitted under subsections (5) and (6) of this rule prior to making its final determination of whether the person meets the criteria for designation as a predatory sex offender, if the Department of State Police receives these materials within the time limit set forth in subsection (7) of this rule.

(9) If, after considering materials submitted under subsections (5) and (6) of this rule, the Department of State Police determines that the person meets the criteria for designation as a predatory sex offender, the Department of State Police will designate the person as a predatory sex offender and will inform the person in writing by registered or certified mail of the designation. The designation is effective as of the date of the letter informing the person of the designation.

(10) If, after considering materials submitted under subsections (5) and (6) of this rule, the Department of State Police determines that the person does not meet the criteria for designation as a predatory sex offender, the Department of State Police will inform the person in writing by registered or certified mail, that the Department of State Police is not designating the person as a predatory sex offender at that time.

(11) A person from whom the Department of State Police does not receive any materials under subsections (5) and (6) of this rule within 35 days of the date of the notice of proposed designation provided under subsection (4) of this rule will be deemed not to object to designation as a predatory sex offender, unless the cause for the failure to submit materials was beyond the reasonable control of the person, as determined by the Department of State Police. The designation is effective as of the thirty-sixth day after the date of the notice of proposed designation provided under subsection (4) of this section.

(12) The Department of State Police may designate a person as a predatory sex offender if the person meets the Department of Corrections sex offender risk assessment scale criteria for designation as a predatory sex offender, regardless of whether the Department of State Police or any other agency determined at any previous time that the person was not a predatory sex offender.

(13) Prior to petitioning for judicial review of the Department's designation of the person as a predatory sex offender under subsection (9) of this rule, the person shall file with the Department of State Police a petition for reconsideration of the designation. The petition for reconsideration must be received by the Department of State Police within 60 calendar days of the date of the Department's designation of the person as a predatory sex offender under subsection (9) of this rule and must also comply with other requirements of OAR 137-004-0080. The Department of State Police will inform the person in writing of its decision on reconsideration. The Department's decision on reconsideration will be sent by registered or certified mail and is effective as of the date of the decision on reconsideration.

(14) Notwithstanding subsection (13) of this rule, within 60 calendar days of the date of the Department's designation of the person as a predatory sex offender under subsection (9) of this rule, the Department of State Police may reconsider the designation on its own initiative as provided in OAR 137-004-0080. Following reconsideration of a designation on the Department's own initiative, the Department will inform the person in writing of its decision on reconsideration. The decision on reconsideration will be sent by registered or certified mail and is effective as of the date of the decision on reconsideration.

(15) In its discretion, the Department of State Police may conduct community notification or notify the public concerning a person designated as a predatory sex offender in any manner authorized by law.

Stat. Auth.: ORS 183.335, 181 & 192.430.

Stats. Implemented: ORS 181.585 - 181.608

Hist.: OSP 4-1999(Temp), f. & cert. ef. 10-29-99 thru 4-25-00; OSP 3-2000, f. & cert. ef. 7-11-00; OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05

Adm. Order No.: REV 3-2004

Filed with Sec. of State: 6-25-2004

Certified to be Effective: 6-25-04

Notice Publication Date: 5-1-04

Rules Adopted: 150-320.305

Rules Repealed: 150-OL 2003 Ch. 818(T)

Subject: 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. The temporary rule is being repealed.

Rules Coordinator: Xann-Marie Culver—(503) 947-2099

150-320.305

State Lodging Tax

(1) *Application of the tax.* The tax applies to rents received for the rental of a dwelling unit or recreational vehicle space that is considered to be transient lodging. A unit or space is considered transient lodging if:

(a) The unit or space is rented or available for rent to the general public at least half of the time the unit or space is available for rent during the calendar year, and

(b) The unit or space is available for rent on a daily or weekly basis at least half of the time the unit or space is available for rent during a calendar year, and

(c) The unit or space isn't being rented for a month or longer term under a rental or lease agreement.

Example 1: Daniel operates a motel. He rents units on a month to month basis and most units are occupied by persons as their principal residences or as living quarters during long term business assignments away from home. A unit, once vacated, will infrequently be rented out by the day or week until another monthly renter can be found. Because Daniel does not rent units on a daily or weekly basis for at least half the time the unit is available during the year, he is not required to collect and remit the state lodging tax.

Example 2: For four weeks each summer, John offers a riverside parcel of land for rent by his coworkers to park their recreational vehicle while vacationing. Because John does not provide the recreational vehicle space to the general public he is not required to collect a lodging tax on the rent he receives.

Example 3: Jim operates the Bar-B-Q Mobile Home Park. There are 37 spaces rented permanently to residents. They pay on a monthly basis. The spaces are occupied by a mixture of manufactured homes and recreational vehicles. Jim has 10 spaces in the front of the park that are typically rented for periods of a week or less by people traveling in recreational vehicles. Jim would collect the tax on rents charged for the 10 spaces rented on a daily or weekly basis but would not collect the tax on the 37 spaces rented on a monthly basis.

Example 4: The Bandon Community Church owns and operates a campground with cabins and recreational vehicle spaces for use by its members and members of associated churches. All of the spaces and cabins in the campground are rented or available for rent to the general public for two months out of the five months the campground is open during each year. The church is not required to collect and pay the state lodging tax because it does not offer any of the cabins or spaces to the public for more than half the time they are available for rent during the year.

(2) For purposes of ORS 320.305:

(a) "Hotel, motel and inn dwelling units" include any dwelling unit that is designed for temporary overnight human occupancy. Examples include but are not limited to rooms or suites of rooms in facilities known as motor lodges, lodges, condominiums, bed and breakfasts, and cabins. "Hotel, motel and inn" does not include a vacation home that is a free-standing house on a separately-owned property even though the entire house is rented or available for rent on a daily or weekly basis.

(b) "Dwelling units that are designed for temporary overnight human occupancy" include rented rooms and suites of rooms with living spaces, storage, appliances, and related amenities that are provided for the purpose of short-term occupancy.

(c) "Transient lodging provider" includes a person who operates a facility whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, concessionaire, or any other capacity.

(3) *Public and Private Providers Must Collect the Tax.* The state lodging tax applies to rents charged for dwelling units and recreational vehicle spaces provided by public and private persons. It applies to dwelling units and recreational vehicle spaces offered to the general public by state and local parks departments. It also applies to dwelling units and spaces offered for rent to the general public on federal lands operated by a concessionaire on a contract basis with a federal agency such as the U.S. Forest Service, Bureau of Land Management, and the National Parks Service. However, the tax does not apply to rents charged for dwelling units and spaces rented directly by an agency of the federal government.

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(4) *Services Included in the Fee for Lodging.* Generally, the tax applies to the entire fee charged for the use of a room or suite of rooms and all incidental services and amenities provided. If the fee charged for lodging includes other non-incidental services, then the tax will not apply to provision of such services if, in determining the amount on which to calculate the state lodgings tax, the provider reasonably allocates the fee charged to the dwelling unit and to other non-incidental services. Incidental services include but are not limited to fees for bringing a pet into the room, maid service and the provision of toiletries in the room. Non-incidental services may include, but are not limited to, meals, "free" transportation to the airport, or access to exercise equipment, pools, or spas unless such equipment or amenities are located within the room or suite of rooms or are accessible only by occupants of the room. Any allocation made for the State Lodgings Tax should be consistent with such allocation for a local lodging tax. If a separate fee is charged for the other services and the service is optional, that fee will not be subject to the tax. Examples of optional fees include but are not limited to fees for pay-per-view movies, room service charges, honor bar charges or restaurant meals charged to the room.

Example 5: The ABC Bed and Breakfast charges \$100 per night for a room. Guests are provided a breakfast that is included in the per night fee. Guests may also have lunch or dinner at ABC and may charge the cost of these meals to their room. ABC has determined a similar breakfast could be purchased in a local restaurant for \$7.50, leaving \$92.50 as the charge for occupancy of the room. The state lodging tax applies to the \$92.50 fee for the room. The tax does not apply to any charges for optional meals purchased by ABC's guests.

Example 6: Annie runs the Countryside Guest Ranch. The ranch is an all-inclusive resort where the guests pay a single fee per day for staying on the ranch with special offers available for guests wishing to stay for one or two weeks. The fee covers all lodgings, meals, horseback riding and entertainment. Annie has reasonably allocated 50 percent of the total fee to the provision of the lodging and 50 percent to the other amenities, such as horseback riding, use of the resort's tennis courts and pool. Annie would collect from her guests the state lodgings tax on the 50 percent of the fee that is allocated to the lodging rent.

(5) *Use of a Managing Agent.* If a transient lodging provider uses a managing agent that is not an employee, the managing agent is considered the provider for the purposes of the tax and has the same duties and liabilities as the operator. Compliance with the provisions of the state lodging tax by either the lodging provider or the managing agent is considered compliance by both.

(6) *Registration of Providers.* A transient lodging provider must register with the department on forms provided by the department.

(7) *Penalty Imposed.* The person submitting the return required by ORS 320.315 must sign the return and is subject to the penalty for false swearing under ORS 162.075, which is a Class A misdemeanor.

Stat. Auth.: ORS 305.100 & 320.315

Stats. Implemented: ORS 320.305

Hist.: REV 3-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; REV 3-2004, f. & cert. ef. 6-25-04

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**Department of Transportation
Chapter 731**

Adm. Order No.: DOT 3-2004

Filed with Sec. of State: 6-24-2004

Certified to be Effective: 6-24-04

Notice Publication Date: 3-1-04

Rules Adopted: 731-050-0020

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

Rules Coordinator: Brenda Trump—(503) 945-5278

731-050-0020

Definition of "Ready for Construction"

For purposes of Section 57, Chapter 618, Oregon Laws 2003 (HB 2041), "Ready for Construction" means that priority will be given to modernization projects, that as of the effective date of this rule:

(1) Have completed plans, specifications and cost estimates (PS&E); and

(2) In the event use of federal funds are likely in any aspect of the project, have been approved for construction by the Federal Highway Administration (FHWA).

Stat. Auth.: ORS 184.616, 184.619 & Sec. 57, Ch. 618, OL 2003

Stat. Implemented: Sec. 57, Ch. 618, OL 2003

Hist.: DOT 3-2004, f. & cert. ef. 6-24-04

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

Adm. Order No.: DMV 12-2004

Filed with Sec. of State: 6-24-2004

Certified to be Effective: 6-24-04

Notice Publication Date: 4-1-04

Rules Adopted: 735-018-0120, 735-020-0080

Rules Repealed: 735-018-0120(T), 735-020-0080(T)

Subject: These rules implement amendments to ORS 803.112, 803.113 and 803.117 made by Chapter 121, Oregon Laws 2003 (HB 2542). Specifically, HB 2542 amends ORS 803.112 by repealing vehicle transferor notice requirements formerly codified at ORS 803.112(1). This amendment authorizes DMV to specify by rule what information is to be submitted to DMV from a transferor (seller) who transfers an interest in a vehicle covered by an Oregon title. The legislative change also deleted language in ORS 803.117 that defined "notice to DMV" for purposes of relieving the seller from ongoing liability for the vehicle when title is not transferred. These rules specify what information must be submitted to DMV from a transferor (seller) who transfers an interest in a vehicle covered by an Oregon title. OAR 735-020-0080 specifies the form and content of the notice required to be submitted to DMV by a transferor (seller) of an interest in a vehicle pursuant to ORS 803.112 and 803.117. In addition to written notice, the rule authorizes notice by electronic means and gives DMV discretion to accept seller notice information by telephone or facsimile machine. OAR 735-018-0120 authorizes electronic submission of a notice under ORS 803.112 and 803.117 through DMV's website.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-018-0120

Notification of Transfer or Sale of Vehicle by Electronic Means

Notice required under ORS 803.112 and 803.117 that a person has transferred interest in a vehicle covered by an Oregon title may be submitted to DMV by means of an electronic transaction through DMV's website.

Stat. Auth.: ORS 814.616, 184.619, 802.012, 803.112 & 803.112

Stat. Implemented: ORS 802.012, 803.112 & 803.117

Hist.: DMV 27-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 12-2004, f. & cert. ef. 6-24-04

735-020-0080

Notice of Transfer of Interest in a Vehicle

(1) This rule specifies in what form notice must be submitted to DMV under ORS 803.112 and 803.117 that a person has transferred an interest in a vehicle covered by an Oregon title.

(2) Notice submitted under ORS 803.112 and 803.117 must contain the following information:

(a) The vehicle identification number (VIN);

(b) The vehicle registration plate number;

(c) The full name of the person who transferred an interest in the vehicle (seller/transferor); and

(d) The full name of the transferee (new owner/buyer).

(3) Notice meeting the requirements of section (2) of this rule must be submitted to DMV:

(a) In writing, and includes a Notice of Sale or Transfer of a Vehicle form (DMV Form 6890), a completed seller notice on the back of the vehicle's registration card or any other written document that contains the required information. Written notice may be delivered to any DMV office or mailed to DMV Headquarters; or

(b) Electronically, using DMV's online Notice of Sale or Transfer form as set forth in OAR 735-018-0120.

(4) At DMV's discretion, notice meeting the requirements of section (2) of this rule may be faxed or submitted by telephone.

(5) For purposes of ORS 803.112, notice meeting the requirements of sections (2) and (3) of this rule must be submitted within 10 days of the date of a transfer of interest in the vehicle.

Stat. Auth.: ORS 184.616, 184.619, 803.112 & 803.113

Stat. Implemented: ORS 803.112, 803.113 & 803.117

Hist.: DMV 27-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 12-2004, f. & cert. ef. 6-24-04

ADMINISTRATIVE RULES

Adm. Order No.: DMV 13-2004
Filed with Sec. of State: 6-24-2004
Certified to be Effective: 6-24-04
Notice Publication Date: 4-1-04
Rules Adopted: 735-024-0045

Rules Amended: 735-024-0010, 735-024-0020

Rules Repealed: 735-024-0020(T), 735-024-0045(T)

Subject: These rules implement amendments to ORS 803.015 made by Chapter 330, Oregon Laws 2003 (SB 588). Prior to the amendment of ORS 803.015, all title brands except “reconstructed,” “replica,” and “totaled” were determined by DMV by rule. The provisions for these brands were determined by statute. A title brand is printed on a certificate of title to indicate the condition or history of a vehicle. Amended ORS 803.015 authorizes DMV to determine by rule all title brands that may be printed on a certificate of title including “reconstructed,” “replica,” and “totaled.” Accordingly, DMV adopted OAR 735-024-0045 to specify when DMV will issue a title with or remove from a title the “reconstructed,” “replica,” and “totaled” brand. This rule only applies to an application for title submitted to DMV with an Oregon title or salvage title. The rule does not apply to vehicles from other jurisdictions as described under OAR 735-024-0020. OAR 735-024-0010 is amended to clarify Division 24 definitions. OAR 735-024-0020 is amended to include a reference to OAR 735-024-0045.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-024-0010

Previously Damaged Notation Based on Information from Other States — Definitions

As used in this rule and OAR 735-024-0020, the following definitions apply:

(1) “Damaged, Wrecked or Salvaged” means an incident, or occurrence or condition relating to a vehicle that impaired or altered the vehicle from its original state, and:

(a) When these terms appear on a certificate of title or other documents from another jurisdiction, they will form a basis for determining whether to issue an Oregon title with a notation indicating the vehicle was previously damaged in another jurisdiction;

(b) These terms when used by other jurisdictions do not necessarily carry the same meaning as they do under Oregon law or DMV rules, but will be construed to be words of similar import.

(2) “DMV” means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(3) “Words of Similar Import” means any word, term or phrase that means the same or has the same effect as the terms defined in section (1) of this rule:

(a) Words of similar import may include, but are not limited to: reconstructed; rebuilt; assembled; restored salvage; or other terms used by other jurisdictions to denote a vehicle that has been damaged, wrecked or salvaged;

(b) Words that are not “words of similar import” include but are not limited to: gray market; non-USA; prior police; prior taxi; and bonded.

(4) “Previously Damaged” means that DMV has received some indication from another jurisdiction, that the vehicle was damaged, wrecked, reconstructed or salvaged, or words of similar import. The use of this term does not reflect the extent of damage nor to what extent or how well the vehicle may have been repaired. The term “previously damaged” as described in this rule does not apply to vehicles issued a junk title or similar ownership document by another jurisdiction under OAR 735-020-0070.

(5) “Salvage Title,” and “salvage certificate” mean documents issued for a vehicle that indicate the vehicle has been damaged, wrecked or salvaged or words of similar import. “Salvage title” does not refer to Oregon salvage titles, unless the Oregon salvage title reflects a notation that indicates the vehicle was damaged in another jurisdiction, before being titled in Oregon.

(6) “Similar Document” means any report, information, or paperwork that fulfills the same function as the documents listed in section (5) of this rule. Similar documents include but are not limited to:

(a) A report or information from a law enforcement or other agency in another jurisdiction that is authorized to determine if a title brand or notation should be placed on the vehicle title, that indicates a vehicle is damaged, wrecked or salvaged, or words of similar import, or should have carried a brand or notation of damage to the vehicle;

(b) A report or information from a law enforcement or other agency in another jurisdiction that is authorized to determine if a title brand or notation should be placed on the vehicle title, that a salvage title, salvage certificate or similar document should have been issued for the vehicle;

(c) A salvage bill of sale, or other document used by other jurisdictions to indicate that a vehicle has been damaged, wrecked, or salvaged or words of similar import.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.015, 803.045, 819.016 & 821.060
Stats. Implemented: ORS 803.015, 803.045 & 803.420

Hist.: MV 32-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-090-0570; MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 23-2001, f. 11-9-01, cert. ef. 1-1-02; DMV 31-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 7-2004, f. & cert. ef. 5-24-04; DMV 13-2004, f. & cert. ef. 6-24-04

735-024-0020

Brand or Notation From Other Jurisdictions

(1) When DMV receives an application for certificate of title for a vehicle from another jurisdiction, DMV will place a “previous damage” notation on any certificate of title and registration card DMV issues for that vehicle when:

(a) The title from the other jurisdiction carries a brand or notation that indicates the vehicle was damaged, salvaged, totaled, reconstructed or words of similar import; or

(b) DMV receives a salvage title, salvage certificate or similar document or information that indicates the vehicle has been damaged.

(2) The notation described in section (1) of this rule need not necessarily use the same brand or notation as was used on the title, salvage title, salvage certificate or similar document from the other jurisdiction but must:

(a) Indicate that the vehicle was previously damaged; and

(b) Indicate the name of the jurisdiction where the last title or similar document was issued.

(3) DMV may place a notation as described in sections (1) and (2) of this rule on the certificate of title and registration card when any of the documents referenced in section (1) of this rule are received separate from the application for title.

(4) Except as otherwise provided in sections (5) and (6) of this rule, a notation issued under this rule will be issued on any subsequent Oregon certificate of title and registration card issued for the vehicle.

(5) DMV will omit, remove or change a notation when:

(a) DMV is provided with information from the originating jurisdiction that indicates that its title incorrectly reflects a brand or notation;

(b) DMV is satisfied the notation was placed on the Oregon title in error; or

(c) A subsequent accident or occurrence causes the vehicle to be identified with a different notation such as “totaled.”

(6) When the certificate of title from another jurisdiction carries a “reconstructed” or “replica” brand or is a salvage title, a salvage certificate or similar document, DMV may require documentation to determine if the vehicle otherwise qualifies as a reconstructed vehicle or replica vehicle. If DMV determines the vehicle meets Oregon requirements for an assembled, reconstructed or replica vehicle, DMV will place a brand on the Oregon title in accordance with the requirements of OAR 735-024-0045(2)(a) or (b).

(7) This rule does not apply to:

(a) An application for title submitted to DMV with an Oregon title or salvage title as described under OAR 735-024-0045; or

(b) A vehicle issued a junk title or similar ownership document by another jurisdiction as described under OAR 735-020-0070.

Stat. Auth.: ORS 184.616, 184.619, 802.012, 803.015, 819.016, 821.060

Stats. Implemented: ORS 803.015, 803.113, 803.117, 821.060

Hist.: MV 32-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-090-0580; MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 23-2001, f. 11-9-01, cert. ef. 1-1-02; DMV 30-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 13-2004, f. & cert. ef. 6-24-04

735-024-0045

Issuance of Oregon Title with a Reconstructed, Replica or Totaled Brand

(1) This rule specifies when DMV will issue an Oregon certificate of title with a “reconstructed,” “replica,” or “totaled” brand. The title brand issued under this rule will be printed on the Oregon certificate of title and registration card issued for the vehicle.

(2) An Oregon certificate of title described in section (1) of this rule will be issued with:

(a) A “reconstructed” brand if the vehicle is reconstructed, as defined in ORS 801.045. The certificate will also indicate the original year, model and make of the vehicle. This subsection does not apply to an antique vehicle;

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(b) A "replica" brand if the vehicle is a replica, as defined in ORS 801.425;

(c) A "totaled" brand if the vehicle has been reported to DMV as a totaled vehicle under the provisions of ORS 819.012 or 819.014. This does not apply if the reason for the report was theft, the vehicle has been recovered, and the vehicle does not meet the definition of a totaled vehicle as described under this subsection. Additionally, a title that carries a "replica" or "reconstructed" brand will have a "totaled" brand added if the vehicle is reported as totaled as described in this subsection. For example, "totaled-replica" or "totaled-reconstructed" whichever is applicable. Similarly, a totaled vehicle that is reconstructed will be issued a title with a "totaled-reconstructed" brand.

(3) Except as provided in section (4) of this rule, a brand described in sections (1) and (2) of this rule will be printed on any future Oregon certificate of title and registration card issued for the vehicle.

(4) DMV will omit, remove or change a brand when:

(a) DMV is provided with information that indicates that a title incorrectly reflects a brand;

(b) DMV is satisfied the brand was placed on the Oregon title in error; or

(c) A subsequent accident or occurrence causes the vehicle to be identified with a different brand such as "totaled."

(5) Except as provided in OAR 735-024-0020(6), this rule does not apply to a vehicle with a certificate of title issued by another jurisdiction that is being titled and registered in Oregon.

Stat. Auth.: ORS 184.616, 184.619, 803.015

Stats. Implemented: ORS 803.015

Hist. DMV 30-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 13-2004, f. & cert. ef. 6-24-04

Adm. Order No.: DMV 14-2004

Filed with Sec. of State: 6-24-2004

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Rules Amended: 735-040-0050, 735-040-0055, 735-040-0061, 735-040-0080, 735-040-0095, 735-040-0097, 735-040-0100

Rules Repealed: 735-040-0050(T), 735-040-0055(T), 735-040-0061(T), 735-040-0080(T), 735-040-0095(T), 735-040-0097(T), 735-040-0100(T)

Subject: These rules implement 2003 Or. Laws Chapter 409, sections 3 and 4 (SB 508) that amended ORS 805.205 and ORS 805.206. The amendments changed statutory provisions that pertain to the procedures and requirements for issuance of special registration plates for certain groups. Special group registration plates are issued to benefit qualified veterans organizations, institutions of higher education and non-profit organizations. The statutory amendments require a \$10,000 application fee when a group applies for a special registration plate. The application fee will be refunded if the group sells at least 1,000 sets of plates within the first 12 months of issuance. Further, the legislative amendments require DMV to stop production of a group's plates if the group fails to sell or renew at least 500 sets of plates within a 12 consecutive month period. The previous group plate sales threshold was 50 sets of plates within a 12-month period. Other revisions to these rules have been made to clarify eligibility and the application process.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-040-0050

Eligibility for Veteran Group Plates

(1) To request issuance of veterans group plates a veterans group must qualify by submitting written documentation sufficient to satisfy DMV that:

(a) The group is a nonprofit group that represents veterans of the Armed Forces of the United States, or is established for the purpose of supporting or recognizing such veterans;

(b) The group has an established membership, that includes officers and bylaws; and

(c) The group is physically located in Oregon or has a chapter that is physically located in Oregon.

(2) The applicant must submit an application and fees to DMV that complies with OAR 735-040-0080.

Stat. Auth.: ORS 184.616, 184.619, 805.205, 805.206

Stats. Implemented: ORS 805.205, 805.206

Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 14-2004, f. & cert. ef. 6-24-04

735-040-0055

Qualifications; Higher Education Group Plates

(1) To request issuance of Higher Education group plates an institution of higher education must qualify by submitting written documentation sufficient to satisfy DMV that:

(a) The group is physically located in Oregon or has a chapter that is physically located in Oregon; and

(b) The group is an institution of higher education or is representing an institution of higher education to obtain group plates for that institution.

(2) The applicant must submit an application and fees to DMV that complies with OAR 735-040-0095.

Stat. Auth.: ORS 184.616, 184.619, 805.205, 805.206

Stats. Implemented: ORS 805.205, 805.206

Hist.: DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 14-2004, f. & cert. ef. 6-24-04

735-040-0061

Qualifications; Non-Profit Group Plates

(1) To request issuance of non-profit group plates a non-profit organization must qualify by submitting written documentation sufficient to satisfy DMV that:

(a) The group is physically located in Oregon or has a chapter that is physically located in Oregon; and

(b) The group is registered with the IRS as a 501(c)(3) non-profit corporation or foundation. Such proof must be a copy of the ruling or determination letter issued by the IRS granting tax-exempt status under 501(c)(3), and must include a federal identification number or IRS identification number for the 501(c)(3) non-profit corporation.

(2) The applicant must submit an application and fees to DMV that complies with OAR 735-040-0097.

Stat. Auth.: ORS 184.616, 184.619, 805.205, 805.206

Stats. Implemented: ORS 805.205, 805.206

Hist.: DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 14-2004, f. & cert. ef. 6-24-04

735-040-0080

Application and Approval and Renewal Process for Veterans' Group

(1) A veterans group that is qualified to apply for group plates under OAR 735-040-0040 and 735-040-0050 must submit the following to DMV:

(a) A completed and signed Application for Approval of Veterans Group Plates (DMV Form 7069);

(b) A \$10,000 application fee at the time of application. This fee is in addition to any other fee required by law or rule;

(c) Fees to cover DMV's anticipated administrative expenses related to the design and production of the veterans group plates requested. At the time of application, DMV will estimate the costs, including but not limited to computer programming costs, plate design costs, color costs and vendor set-up fees, which must be paid prior to approval of the application;

(d) The written documentation required under OAR 735-040-0050, including a copy of the group's bylaws, organization papers or other documents that show it is a veterans organization;

(e) The names and addresses of the group's current directors or officers, and the name, address and phone number of the group's authorized representative. The authorized representative is the person authorized to apply for veterans group plates on behalf of the group and is the contact person for DMV on any matter related to the group plates;

(f) The word(s), or initials the group is requesting for use on the plate to identify the group. DMV must approve and authorize any request before it may be used on a veterans group plate;

(g) A certification or other evidence as may be required by DMV that the group has the authority to use the requested word(s), or initials on a registration plate;

(h) Specific information as to where moneys collected by DMV from the sale of group plates should be deposited. If no account has been specified by the time moneys collected from the sale of the group's plates are distributed by DMV, the moneys will be deposited to the Environmental Quality Information Account as provided by law; and

(i) Whether or not the group requests restrictions on the issuance of the group plates as covered in OAR 735-040-0090 and any other information DMV may require concerning the restriction.

(2) In addition to the requirements described in section (1) of this rule, the group must provide an estimate of the number of plates it will sell during the next 12-month period.

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(3) DMV may at any time request from the authorized representative further information or documentation necessary to determine if the group is eligible for group plates. DMV will refuse to approve the issuance of group plates, or may withdraw approval previously granted if DMV determines:

- (a) The group is not eligible;
 - (b) The word(s) or initials used, or proposed to be used, to name or describe the group contain an expression of political opinion or religious belief, contrary to ORS 805.205; or
 - (c) The authorized representative fails to provide information or documentation as requested by DMV.
- (4) DMV will contact the authorized representative:
- (a) At the time the application is approved or denied;
 - (b) When additional information or documentation is required or consultation is necessary; or
 - (c) If DMV proposes to withdraw its approval to issue plates for the group.

(5) Once plates are approved, the authorized representative must file an annual statement with DMV showing the group continues to be eligible for group plates. The statement must:

- (a) Be on a form provided by DMV or that is acceptable to DMV;
 - (b) Include a statement that the group continues to meet the requirements described in OAR 735-040-0050;
 - (c) Include the names and addresses of the current group directors, or officers, and the name, address and phone number of the group's authorized representative;
 - (d) Show that the group continues to be a nonprofit group; and
 - (e) Provide an estimate of the number of plates the group expects to sell during the next 12 months.
- (6) The group must immediately notify DMV anytime:
- (a) There is a change in the name, address or phone number of the authorized representative; or
 - (b) The group is dissolved, is no longer a nonprofit organization or is otherwise no longer qualified for veterans group plates under OAR 735-040-0050.

Stat. Auth.: ORS 184.616, 184.619, 805.205, 805.206

Stats. Implemented: ORS 805.205, 805.206

Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 14-2004, f. & cert. ef. 6-24-04

735-040-0095

Application, Approval, Renewal and Issuance Process for Higher Education Group Plates

(1) An institution of higher education or a group representing an institution of higher education that is qualified to apply for group plates as provided in OAR 735-040-0040 and 735-040-0055 must submit the following to DMV:

- (a) A completed and signed Application for Approval of Group Plates for Institutions of Higher Education and Non-Profit Groups (DMV Form 735-7076);
- (b) A \$10,000 application fee at the time of application. This fee is in addition to any other fee required by law or rule;
- (c) Fees to cover DMV's anticipated administrative expenses related to the design and production of the higher education group plates requested. At the time of application, DMV will estimate the costs, including but not limited to computer programming costs, plate design costs, color costs and vendor set-up fees, which must be paid prior to approval of the application;

(d) The written documentation required under OAR 735-040-0055 that the group is an institution of higher education or is a group authorized by an institution of higher education to obtain plates for that institution as described in OAR 735-040-0055;

(e) The word(s), initials, image or logo the institution is requesting for use on the plate to identify the institution of higher education. DMV must approve and authorize any request before it may be used on a higher education group plate;

(f) A certification or other evidence as may be required by DMV that the group has the authority to use the requested word(s), initials, image or logo on a registration plate;

(g) If the group is an institution of higher education, the name, address and phone number of the institution's authorized representative. The authorized representative is the person authorized to apply for higher education group plates on behalf of the institution and is the contact person for DMV on any matter related to the group plates;

(h) If the group is representing an institution of higher education, the names and addresses of the current directors, or officers and the name,

address and phone number of the group's authorized representative, as described in subsection (g) of this section; and

(i) Specific information as to where moneys collected by DMV from the sale of group plates should be deposited. The money must be deposited in an account in the general fund of the institution. An institution or group representing an institution is not eligible for higher education group plates unless this information is provided at the time of application.

(2) If the group is not an institution, the application must be accompanied by written authorization from the institution that specifically authorizes the group to obtain higher education group plates on behalf of the institution. Authorization must come from a representative of the institution who has been given authority to sign the authorization on behalf of the institution.

(3) An institution must immediately notify DMV if a group previously authorized by the institution is no longer authorized to obtain plates on behalf of the institution.

(4) In addition to the requirements described in sections (1) through (3) of this rule, the institution or group must provide an estimate of the number of plates it expects to sell during the next 12-month period.

(5) DMV may at any time request from the authorized representative further information or documentation necessary to determine if the institution or group is eligible for higher education group plates. DMV will refuse to approve the issuance of group plates, or may withdraw approval previously granted if DMV determines:

- (a) The institution or group representing the institution is not eligible for higher education group plates; or
- (b) The word(s), initials, image or logo used or proposed to be used to name or describe the institution contain an expression of political opinion or religious belief, contrary to ORS 805.205.

(6) DMV will contact the authorized representative:

- (a) At the time the application is approved or denied;
- (b) When additional information or documentation is required or consultation is needed; or
- (c) If DMV proposes to withdraw its approval to issue plates.

(7) Once plates are approved the authorized representative must file an annual statement with DMV showing the institution continues to be eligible for group plates. The statement must:

- (a) Be on a form provided by DMV or that is acceptable to DMV;
- (b) Include a statement that the group continues to meet the requirements described in OAR 735-040-0055;
- (c) Include written authorization from the institution stating that the group continues to have authorization to act on behalf of the institution in relation to the group plate program;
- (d) Provide the name, address and phone number of the institution's authorized representative or if it is a group representing the institution, the names and addresses of the current directors or officers and the name, address and phone number of the group's authorized representative; and
- (e) Provide an estimate of the number of plates the institution expects to sell during the next 12 months.

(8) The institution or representing group must immediately notify DMV:

- (a) Anytime there is a change in the name or address of the authorized representative; or
- (b) If the institution withdraws authorization from the representing group to act on behalf of the institution in relation to the group plate program.

(9) Upon receiving information from an institution that it is withdrawing authorization from a representing group to produce group plates, DMV will stop production of the group's plates and notify the group's authorized representative of the withdrawal of authorization.

Stat. Auth.: ORS 184.616, 184.619, 805.205, 805.206

Stats. Implemented: ORS 805.205, 805.206

Hist.: DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 14-2004, f. & cert. ef. 6-24-04

735-040-0097

Application, Approval, Renewal and Issuance Process for Non-Profit Groups

(1) A non-profit group that is qualified to apply for group plates under OAR 735-040-0040 and 735-040-0061 must submit the following to DMV:

(a) A completed and signed Application for Approval of Group Plates for Institutions of Higher Education and Non-Profit Groups (DMV Form 735-7076);

(b) A \$10,000 application fee at the time of application. This fee is in addition to any other fee required by law or rule;

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(c) Fees to cover DMV's anticipated administrative expenses related to the design and production of the non-profit group plates requested. At the time of application, DMV will estimate the costs, including but not limited to computer programming costs, plate design costs, color costs and vendor set-up fees, which must be paid prior to approval of the application;

(d) The written documentation required under OAR 735-040-0061, and a copy of the group's bylaws and articles of incorporation;

(e) The names and addresses of the group's current directors or officers and the name, address and phone number of the group's authorized representative. The authorized representative is the person authorized to apply for non-profit group plates on behalf of the group and is the contact person for DMV on any matter related to the group plates;

(f) The word(s), or initials the group is requesting for use on the plate to identify the group. DMV must approve and authorize any request before it will be used on a non-profit group plate;

(g) A certification or other evidence as may be required by DMV that the group has the authority to use the requested word(s), or initials on a registration plate; and

(h) Specific information as to where moneys collected from the sale of group plates should be deposited. If no account is specified by the time moneys collected from the sale of the group's plates are distributed by DMV, the moneys will be deposited to the Environmental Quality Information Account as provided by law.

(2) In addition to the requirements described in section (1) of this rule, the group must provide an estimate of the number of plates it will sell during the next 12-month period.

(3) DMV may at any time request from the authorized representative further information or documentation necessary to determine if the non-profit group is eligible for group plates. DMV may refuse to approve the issuance of group plates, or may withdraw approval previously granted if DMV determines:

(a) The group is not eligible;

(b) The word(s), or initials used or proposed to be used to name or describe the group contain an expression of political opinion or religious belief, contrary to ORS 805.205; or

(c) The authorized representative fails to provide information or documentation as requested by DMV.

(4) DMV will contact the authorized representative:

(a) At the time the application is approved or denied;

(b) When additional information or documentation is required or consultation is necessary; or

(c) If DMV proposes to withdraw its approval to issue plates for the group.

(5) Once plates are approved the authorized representative must file an annual statement with DMV showing the group continues to be eligible for non-profit group plates. The statement must:

(a) Be on a form provided by DMV or that is acceptable to DMV;

(b) Include a statement that the group continues to meet the requirements described in OAR 735-040-0061;

(c) Include the names and addresses of the current group directors, or officers and the group's authorized representative;

(d) Certify the group continues to be registered with the IRS as a 501(c)(3) non-profit corporation or foundation; and

(e) Provide an estimate of the number of plates the group expects to sell during the next 12-month period.

(6) The group must immediately notify DMV anytime:

(a) There is a change in the name or address of the group's authorized representative; or

(b) The group is dissolved, is no longer a tax-exempt 501(c)(3) organization or is otherwise no longer qualified for non-profit group plates under OAR 735-040-0061.

Stat. Auth.: ORS 184.616; 184.619, 805.205, 805.206

Stats. Implemented: ORS 805.205, 805.206

Hist.: DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 14-2004, f. & cert. ef. 6-24-04

735-040-0100

Refund of Fees; Withdrawal and Reinstatement of Group Plates

(1) DMV will refund a group's \$10,000 application fee if the group sells at least 1,000 sets of plates within the first 12-month period following issuance of the plates. The refund will be issued in the name of the group and mailed to the group's authorized representative designated on the group plate application form.

(2) DMV will stop production of a group's plate if the group:

(a) Fails to provide an annual statement as required under OAR 735-040-0080, 735-040-0095 and 735-040-0097;

(b) The group ceases to exist;

(c) The group's approval is otherwise withdrawn;

(d) DMV determines the word(s), initials, image or logo used to name or describe the group are inconsistent with statute or rule; or

(e) DMV fails to sell or renew at least 500 sets of plates within any 12 consecutive month period. For purposes of this rule and OAR 735-040-0050 through 735-040-0097:

(A) "Sets" mean any plate(s) issued other than those issued as a replacement plate(s), whether one or two plates are issued; and

(B) The first day of the month in which the group plates are first offered for sale will be used to determine the start of the first 12-month period.

(3) DMV will notify the group's authorized representative if DMV will no longer produce plates for the group.

(4) Except as provided in section (5) of this rule, when DMV stops production of a group's plate DMV will continue to issue any remaining plate inventory until the inventory is depleted.

(5) If DMV stops production of a group's plate because the word(s), initial(s), image or logo used to identify the group is determined to be inconsistent with statute or rule:

(a) DMV may restart production if:

(A) The group is otherwise eligible and qualified to have group plates; and

(B) After consulting with the authorized representative, a different word(s), initial(s), image or logo is approved by DMV to identify the group or institution ;and

(b) DMV will destroy any remaining plate inventory.

(c) If DMV ceases to order plates for any reason not covered in this section, DMV will continue to issue any remaining plate inventory until the inventory is depleted.

(6) If production of a group's plate is discontinued for reasons other than those described in section (5) of this rule, to restart production, the group must reapply and pay all required fees as described in OAR 735-040-0050 through 735-040-0097.

Stat. Auth.: ORS 184.616; 184.619, 805.205, 805.206

Stats. Implemented: ORS 805.205, 805.206

Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 14-2004, f. & cert. ef. 6-24-04

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Rules Adopted: 735-062-0300, 735-062-0310, 735-062-0320, 735-062-0330, 735-062-0340, 735-062-0350, 735-062-0360, 735-062-0370, 735-062-0380

Rules Amended: 735-062-0050

Subject: Chapter 277, Oregon Laws 2003 allows people who do not meet eligibility standards for a driver's license due to poor visual acuity to qualify for a special restricted license that requires the use of a bioptic telescopic lens if certain criteria are met. OAR 735-062-0300 through 735-062-0380 implement the requirements of this law, which is effective on July 1, 2004. These rules: establish the requirements for certifying a person as a rehabilitation specialist to provide training to a person with a limited vision condition on the use of bioptic telescopic lens while driving; the requirements of the training program that the certified rehabilitation specialists must provide; establish the skills the limited vision condition applicant must exhibit in order for the rehabilitation specialist to certify the person's competency to apply for driving privileges; and the process and criteria for issuance of a special limited vision condition learner's permit or a driver license or instruction permit to a person with a limited vision condition. OAR 735-062-0050 establishes the vision standards that a person must meet to qualify for a driver's license. The rule is amended to clarify that persons issued driving privileges pursuant to the rules implementing Oregon Laws 2003, Chapter 277, are exempt from these eyesight check standards. The amendment to section (2) of this rule clarifies the information necessary to add or remove a daylight only driving restriction on a person's driving privileges.

Rules Coordinator: Brenda Trump—(503) 945-5278

ADMINISTRATIVE RULES

735-062-0050

Eyesight Check Content and Standards

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will check the following items when testing the eyesight of applicants for a driver permit or driver license:

- (a) Acuity; and
- (b) Field of vision.

(2) DMV may issue a driver permit or driver license only to persons whose eyesight, with best possible correction, meets the following standards:

(a) Acuity: The person must have a visual acuity level of 20/70 or better when looking through both eyes (or one eye if the person has usable vision in only one eye). Persons with usable vision in two eyes will meet the standard if the visual acuity level in one eye is worse than 20/70 so long as the visual acuity level in the other eye is 20/70 or better;

(b) Field of vision: The person must have a field of vision of 110 degrees; and

(c) Daylight driving only: DMV will restrict the person to daylight driving only, if the person's best eye is worse than 20/40 and no worse than 20/70, unless in the written opinion of a licensed vision specialist (ophthalmologist, oculist, or optometrist), the person's driving should not be restricted. DMV will restrict a person whose vision is 20/40 or better to daylight driving only if in the written opinion of a licensed vision specialist such restriction is warranted.

(3) A person may meet the eyesight check standards with the use of a corrective lens or lenses. When a person must use a corrective lens or corrective lenses to meet the eyesight check standards, DMV will restrict the person to driving only when wearing corrective lenses. DMV may authorize a person to use a bioptic telescopic lens on a corrective lens, as defined in OAR 735-062-0310(1), if when looking through the carrier lens and not the telescopic device, the person meets the eyesight standards set forth in section (2) of this rule.

(4) Notwithstanding sections (1), (2) and (3) of this rule a person who has a limited vision condition as described in Section 3, Chapter 277, Oregon Laws 2003, may be eligible for restricted driving privileges as set forth in OAR 735-062-0300 through 735-062-0380.

Stat. Auth.: ORS 184.616 & 807.070
Stats. Implemented: ORS 807.070

Hist.: MV 15-1987, f. 9-21-87, ef. 9-27-87; MV 38-1987(Temp), f. & ef. 12-7-87; MV 5-1988, f. 2-16-88, cert. ef. 2-17-88; Administrative Renumbering 3-1988, Renumbered from 735-031-0031; MV 11-1989, f. & cert. ef. 3-6-89; MV 1-1993, f. & cert. ef. 2-16-93; DMV 7-1996, f. & cert. ef. 8-15-96; DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04

735-062-0300

Purpose

Chapter 277, Oregon Laws 2003 allows persons with a limited vision condition to gain limited driving privileges if certain criteria are met. The purpose of OAR 735-062-0300 through 735-062-0380 is to establish a program for the licensing of persons with a limited vision condition, specify requirements and qualifications needed for a person to be certified by DMV as a rehabilitation training specialist for purposes of training a person with a limited vision condition to use bioptic telescopic devices while driving, and to establish requirements for a certified rehabilitation training specialist to certify the competency of a person with a limited vision condition to safely exercise driving privileges using a bioptic telescopic lens.

Stat. Auth.: ORS 184.616, ORS 184.619, Sec. 5, Ch. 277. OL 2003
Stat. Implemented: Ch. 277, OL 2003

Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04

735-062-0310

Definitions

The following definitions apply to OAR 735-062-0300 through 735-062-0380:

(1) "Bioptic telescopic lens" means an optical system used to magnify distant objects by including a small telescope that is mounted in or above a spectacle lens in a manner to allow an unobstructed view of the horizontal visual field through a person's normal distance corrective lens;

(2) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation;

(3) "Daylight hours" means the period of time from sunrise to sunset but does not include periods where adverse weather or other conditions significantly reduce visibility on the roadway;

(4) "Educational facility" includes any public school district, education service district, community college district, any facility for the deaf operated under ORS 346.010, the Hillcrest School of Oregon, MacLaren School for Boys, tribal schools, state and federal schools, public agencies, and any parochial, private-or home-school facility meeting the requirements of OAR 581-045-0535 and ORS 345.505.

(5) "Limited vision condition" means visual acuity in the better eye with best lens correction that is no better than 20/80 and no worse than 20/200.

(6) "Rehabilitation training program" means a program designed to train a person with a limited vision condition to use a bioptic telescopic lens while operating a motor vehicle.

(7) "Rehabilitation training specialist" or "specialist" means a person certified by the Department of Transportation to provide a rehabilitation training program;

(8) "Special limited vision condition learner's permit" means a permit issued by the department to a person with a limited vision condition that allows the person to enroll in a rehabilitation training program; and

(9) "TSD" means the Oregon Department of Transportation, Transportation Safety Division.

Stat. Auth.: ORS 184.616, ORS 184.619, Sec. 5, Ch. 277. OL 2003

Stat. Implemented: Ch. 277, OL 2003

Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04

735-062-0320

Special Limited Vision Condition Learner's Permit

(1) DMV will issue a special limited vision condition learner's permit when:

(a) An applicant has submitted a report from a licensed vision specialist certifying that the person meets the visual standards set forth in Section 3, Chapter 277, Oregon Laws 2003, has been fitted with a bioptic telescopic lens mounted on or above a carrier lens, and would be aided by using a bioptic telescopic lens when operating a motor vehicle;

(b) An applicant submits proof to DMV that the person has been accepted and has enrolled in a rehabilitation training program with a specialist certified by DMV to train persons with a limited vision condition using a bioptic telescopic lens;

(c) An applicant has passed the knowledge test required under ORS 807.070(2); and

(d) An applicant pays a \$13 fee, as required by ORS 807.370(26).

(2) The special limited vision condition learner's permit will:

(a) Be valid for six months;

(b) Be in the form of a letter rather than a laminated card with picture;

(c) Specify that the applicant may only drive when accompanied by the specialist(s) named on the permit;

(d) Include the following restrictions:

(A) The applicant is restricted to driving on roads with a designated or posted speed of 45 miles per hour or lower; and

(B) Driving during daylight hours only; and

(e) Be mailed to the rehabilitation training program with which the applicant has enrolled.

(3) If a person discontinues the required training or fails to make satisfactory progress toward a Certificate of Competency, the specialist must notify DMV immediately with a recommendation to terminate or extend the person's training program.

(4) If the specialist's recommendation is to terminate the applicant's training program or the applicant withdraws from the program, DMV will cancel the special limited vision condition learner's permit issued to the applicant. If the permit is cancelled, the applicant must reapply for a new permit and satisfy all the requirements set forth in section (1) of this rule. Knowledge test scores remain valid for two years.

(5) If the specialist's recommendation is to extend the applicant's training program, DMV will re-issue a special limited vision condition learner's permit for an additional six-month period if the applicant provides proof of continued enrollment in a rehabilitation training program, as set forth in subsection (1)(b) of this rule, and pays a \$13 fee.

(6) A copy of the special limited condition learner's permit must be kept in the applicant's file at the school offering the rehabilitation training program.

Stat. Auth.: ORS 184.616, 184.619, 807.350 and Sec. 5, Ch. 277. OL 2003

Stat. Implemented: Ch. 277, OL 2003

Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04

735-062-0330

Training Program for the Use of Bioptic Telescopic Lenses to Drive

(1) The training program for a person issued a special limited vision condition learner's permit may consist of three parts: theoretical instruction; practical training in critical object or condition awareness skills and use of a bioptic telescopic device; and behind-the-wheel training while using a bioptic telescopic lens. The amount of training required is dependent upon the person's skill and will vary with driving experience and other factors. The specialist may determine which type of training is necessary and the number of hours required for each type, but except as provided in

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section (2) of this rule, must provide a minimum of six hours of practical training and 15 hours of behind-the-wheel training while using a bioptic telescopic lens to all limited vision condition drivers. No behind-the-wheel training can be conducted prior to the rehabilitation training program receiving the person's special limited vision condition learner's permit from DMV in the mail.

(2) Notwithstanding the minimum training requirements set forth in section (1) of this rule, a person who has never been issued a driver license must be provided a minimum of 30 hours theoretical training, six hours of practical training and 24 hours of behind-the-wheel training.

(3) Theoretical instruction may include but not be limited to the following:

- (a) Subject matter contained in the Oregon Driver's Manual;
 - (b) Safe driving practices and traffic laws;
 - (c) The "Search, Identify, Predict, Decide, Execute" (SIPDE) approach to perceptive driving;
 - (d) Signs, signals, highway markings, and highway design features required for the safe operation of a motor vehicle;
 - (e) Driving emergencies such as brake or tire failure, skidding, stuck accelerator, and running off the roadway;
 - (f) Potential crash locations and situations such as intersections, hydroplaning, railroad crossing, multiple vehicle types in the traffic mix, and pedestrian traffic;
 - (g) Occupant restraint usage;
 - (h) Speeding as a major contributing factor in vehicle crashes; and
 - (i) Driver responsibility and accident reporting.
- (4) Practical training must include, but not be limited to, passenger-in-car training that reinforces defensive driving skills, use of mirrors and blind spot checks, critical object or condition awareness (roadway characteristics, traffic control devices and other road users), proper and appropriate use of the bioptic telescopic lens system, and hazard perception skills. By the end of training the person will need to demonstrate the ability to change fixation in and out of his or her bioptic telescope effectively in one to two seconds or less per fixation, under stationary and dynamic conditions.

(5) Behind-the-wheel training must include demonstration, instruction and practice while using a bioptic telescopic lens, consisting of:

- (a) Stopping;
- (b) Starting;
- (c) Recognizing and responding appropriately to traffic control devices, roadway markings, pedestrians, vehicles and other changes in the driving environment;
- (d) Lane position;
- (e) Controlling speed;
- (f) Managing space around the vehicle by adjusting speed and position to avoid conflicts and reduce risk;
- (g) Turning, including right and left turns at protected and unprotected intersections;
- (h) Backing;
- (i) Parking;
- (j) How to enter, use and exit different types of intersections;
- (k) Safe and courteous driving behavior;
- (l) Driving in residential, business, light and heavy traffic situations;

and

(m) Dealing with the unexpected — road construction, emergency vehicles, etc.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 5, Ch. 277, OL 2003
Stat. Implemented: Ch. 277, OL 2003
Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04

735-062-0340

Qualifications to be Certified by DMV as a Rehabilitation Training Specialist

DMV will certify a person to be a rehabilitation training specialist for the express purpose of training limited vision condition applicants using a bioptic telescopic lens when the applicant meets the following qualifications:

- (1) Has successfully completed the following three courses approved by TSD:
 - (a) Foundation of Traffic Safety Education;
 - (b) Fundamentals of Behind-the-Wheel Instruction; and
 - (c) Fundamentals of Classroom Traffic Safety Instruction;
- (2) Has either:
 - (a) A current valid certification by DMV as a commercial driver training instructor; or

(b) Approval by TSD as an educational facility traffic safety education instructor;

(3) Is currently employed by or works as an independent contractor for either:

(a) A DMV certified drive school operator that offers or proposes to offer a driver training program for persons with a limited vision condition who use a bioptic telescopic lens; or

(b) An education facility that offers or proposes to offer a driver training program for persons with a limited vision condition who use a bioptic telescopic lens.

(4) Has a minimum of 1000 hours of experience conducting behind-the-wheel driver training; and

(5) Has enrolled in and successfully completed either:

(a) A DMV sponsored or approved course that addresses how to screen, train and assess the driving potential of persons with a limited vision condition who use a bioptic telescopic lens; or

(b) A DMV approved training program with a certified rehabilitation training specialist or an equivalent specialist in another state that includes at least 20 hours of observation and learning experiences in how to screen, train and assess the driving potential of persons with a limited vision condition who use a bioptic telescopic lens.

(6) If the person has been previously certified as a rehabilitation training specialist, but that certification is canceled, the person is not eligible for re-certification for three years after the effective date of the cancellation.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 5, Ch. 277, OL 2003
Stat. Implemented: Ch. 277, OL 2003
Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04

735-062-0350

Rehabilitation Training Specialist Certificates

DMV will issue a certificate to a person DMV certifies as a rehabilitation training specialist.

(1) The certificate will:

(a) Include the name of the school for which the specialist is an instructor;

(b) Be valid for the calendar year in which it is granted;

(c) Include a unique certification number; and

(2) If the person's is certified as a commercial driver training instructor and that certificate is suspended, revoked, or not renewed for any reason, the same action will apply to the person's rehabilitation training specialist certificate.

(3) A specialist who is not a certified commercial driver training school instructor will lose certification as rehabilitation training specialist if that person is no longer approved by TSD.

(4) If the person is certified as a commercial driver training instructor that certificate will not be affected if the person's rehabilitation training specialist certificate is suspended for violation under OAR 735-062-0360.

(5) The rehabilitation training specialist certificate must be displayed in the school business location. A copy of the certificate must be kept in the rehabilitation specialist file maintained by the school.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 5, Ch. 277, OL 2003
Stat. Implemented: Ch. 277, OL 2003
Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04

735-062-0360

Regulation of Rehabilitation Specialists and Programs Offered

DMV will regulate a person certified as a rehabilitation training specialist as well as the training program that the specialist provides to persons issued a special limited vision condition learner's permit.

(1) DMV may, without prior notice, send a representative to observe any part of the training given by a specialist to a person with a limited vision condition who uses a bioptic telescopic lens. If DMV determines that the training provided does not meet the requirements of OAR 735-062-0330 DMV may:

(a) Issue a written warning describing areas that must be improved within 30 days or the rehabilitation training specialist certificate will be suspended until improvement is made; or

(b) Require the person to attend more training on the usage of bioptic telescopic lens for driving, within three months, in order to retain the rehabilitation training specialist certificate.

(2) The specialist must provide records to the school for a driver with telescopic lens to be retained as required for any other student of the commercial driver training school or educational facility.

(3) A specialist must not provide behind-the-wheel training to the person with a limited vision condition until the person's special limited vision condition learner's permit is received. A failure to comply with the restric-

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tion of the special limited vision condition learner's permit will result in the sanctioning of the rehabilitation training specialist certificate as follows:

- (a) A 30-day suspension for the first offense;
 - (b) A 60-day suspension for the second offense within a three year period; and
 - (c) Cancellation for the third offense within a three year period.
- (4) Failure to comply with OAR 735-062-0320(6), 735-062-0350(5), or 735-062-0360(2) will result in:
- (a) For a first offense a written warning;
 - (b) For a second offense a suspension of the rehabilitation specialist certificate for five days;
 - (c) For a third offense a suspension of the rehabilitation driver training specialist certificate for 30 days.

(5) If a limited vision condition applicant is unable to pass a DMV drive test in two attempts, DMV may question the validity of the Certificate of Competency issued by the specialist. DMV may require the specialist to accompany the applicant and a DMV representative on a drive. If the applicant clearly does not demonstrate driving ability to be issued a Certificate of Competency as described in OAR 735-062-0370, DMV may suspend the rehabilitation specialist certificate until the specialist can show that he or she has attended additional specific instruction in the training of limited vision condition drivers using a bioptic telescopic lens deemed acceptable by DMV or the emphasis of the training has changed to properly train a limited vision condition driver.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 5, Ch. 277, OL 2003
Stat. Implemented: Ch. 277, OL 2003
Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04

735-062-0370

Issuance of Certificate of Competency

(1) Before DMV will issue a driver license or driver permit to a person with a limited vision condition, a specialist must issue a Certificate of Competency showing the person has successfully completed a rehabilitation training program.

(2) To issue a Certificate of Competency, the specialist must certify the person:

- (a) Has successfully completed a rehabilitation training program;
- (b) Has demonstrated the physical, mental and social driving skills necessary to safely operate a motor vehicle in a manner that does not increase the likelihood of hazard or collision under the restricted driving conditions allowed for a driver with a limited vision condition; and
- (c) Is able to effectively use the bioptic telescopic lens for visual assistance in safely operating a motor vehicle.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 5, Ch. 277, OL 2003
Stat. Implemented: Ch. 277, OL 2003
Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04

735-062-0380

Issuance of a Permit or Driver License to a Person with a Limited Vision Condition

When a person has completed the rehabilitation training program, and has received a certificate of competency from the specialist who conducted the person's training, the person may apply to DMV for an instruction permit or a driver license. The person must meet all applicable requirements, except the vision test, to obtain an instruction permit or driver license.

(1) DMV will conduct a drive test, according to OAR 735-062-0070, except that no test route will include a road that has a designated speed or speed limit greater than 45 miles per hour, for any limited vision condition applicant who wishes to be issued a driver license. DMV will issue a license if the drive test is passed and issuance fees are paid.

(2) DMV will restrict a driver license or instruction permit issued to a limited vision condition applicant as follows:

- (a) Driving during daylight hours only;
- (b) Driving on highways with a designated speed or speed limit not greater than 45 miles per hour; and
- (c) The person must wear bioptic telescopic lens device while driving.

(3) An instruction permit allows the person to operate a motor vehicle only when accompanied by a licensed driver at least 21 years of age.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 5, Ch. 277, OL 2003
Stat. Implemented: Ch. 277, OL 2003
Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04

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Adm. Order No.: DMV 16-2004

Filed with Sec. of State: 7-15-2004

Certified to be Effective: 7-15-04

Notice Publication Date: 6-1-04

Rules Amended: 735-048-0000, 735-048-0020

Subject: The rule amendments are needed to clarify ORS 805.390(2), which permits a vehicle registered for farm use to transport items that are incidental to the regular operation of the farm. Current rules prohibit vehicles registered for farm use from transporting firewood. However, since firewood may be a byproduct of an activity that is incidental to the regular operation of a farm, such as clearing land to create more farmable land, the current rule has been amended. The amendment to OAR 735-048-0000(14) removes the reference to firewood business in the definition of "non-qualifying commercial enterprise," and the amendment to OAR 735-048-0020 clarifies that firewood and other items that result from furtherance of regular farming operations are permitted to be transported by a farm registered vehicle as part of the farm business.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-048-0000

Definitions

For the purposes of OAR 735-048-0000 through 735-048-0080 the following definitions apply:

(1) "MCTD" means the Motor Carrier Transportation Division of the Oregon Department of Transportation.

(2) "Farm registration" is as provided in ORS 805.300 and includes any plates, stickers, tabs or devices issued as evidence of that registration.

(3) "Proportional farm registration" is as provided for in ORS 805.400 and includes plates, stickers, permits or other identification devices issued under ORS 805.200 and ORS 805.400.

(4) "Initial farm or proportional farm application" means the process by which a person first qualifies as a farmer and receives farm or proportional farm registration for vehicles being used in conjunction with the farming operation.

(5) "Farming operation" means the one or more farms, orchards or ranches belonging to a qualifying farmer; the agricultural commodities, products and/or livestock produced or raised thereon and the vehicles registered with farm or proportional farm registration for use in conjunction with said operation.

(6) "Qualifying farmer" means a person who has applied for, and received, status as a farmer from MCTD in conjunction with a particular farming operation.

(7) "Agricultural commodities" as used in ORS 805.320 and 805.390 includes, but is not limited to, livestock, poultry, agricultural, horticultural, viticultural and vegetable products. It does not include trees or forest byproducts thereof, except:

(a) Christmas trees which are grown or growing on land which has been prepared by intensive cultivation and tilling and on which all unwanted plant growth is controlled continuously for the exclusive purpose of growing such Christmas trees; or

(b) Hardwood timber, including, but not limited to, hybrid cottonwood, which is:

(A) Grown or growing on land which has been prepared by intensive cultivation methods and which is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for manufacturing paper products;

(C) Harvested on a rotation cycle within 10 years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, insect and disease control, cultivation and irrigation.

(8) "Agricultural products" as used in ORS 805.320 and 805.390 includes products and by-products of agricultural commodities or livestock, subject to the restrictions found in ORS 805.390(1).

(9) "Actually producing" means the farmer is growing agricultural commodities or raising livestock. For example, clearing the land with the intent of farming at a later date is not considered actually producing, however, an orchard which has been planted is considered actually producing.

(10) "Straw" is the stalk of grass or grain that is left after threshing.

(11) "Forest products" means products as defined in ORS 321.005(6).

(12) "Owner" and "ownership" of vehicles are as defined in ORS 801.375. In the case of a leased vehicle, the lessee must be shown as owner on the title as required by OAR 735-022-0100.

(13) A "substantial change" to a farming operation occurs when any of the following happens:

(a) The amount of land owned, leased or rented by the farmer listed for purposes of qualifying for farm registration decreases;

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(b) The amount of agricultural commodities, products produced or livestock raised decreases to the point that they do not reasonably require the use of the vehicles registered under farm operation;

(c) The vehicle(s) ceases to be used on the one or more farms, orchards or ranches for which farm or proportional farm registration was applied for or ceases to be used for the purposes allowed under such registration; or

(d) The farming operation begins operating vehicles (other than pickup trucks) in combinations of four or more axles or which have a registered weight of over 26,000 pounds.

(14) "Non-qualifying commercial enterprise" means any business which is not directly related to the raising of agricultural commodities, livestock or the producing of agricultural products. An example of a non-qualifying commercial enterprise is a timber business.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 805.300 - 805.410.

Stats. Implemented: ORS 805.300 - ORS 805.410

Hist.: MV 20-1983 f. 12-30-83, ef. 1-1-84; MV 3-1986, f. & ef. 1-30-86; Administrative Renumbering 3-1988, Renumbered from 735-071-0087; MV 11-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 10-1996, f. & cert. ef. 11-21-96; DMV 16-2004, f. & cert. ef. 7-15-04

735-048-0020

Permitted Uses

(1) Vehicles registered with farm or proportional farm registration may be used only for the purposes allowed under ORS 805.390.

(2) Vehicles registered under farm or proportional farm registration may be operated for hire only as provided in ORS 825.024.

(3) Except as described in section (5) of this rule, uses permitted under ORS 805.390(2), (3), (5), and (6) do not include transportation related to non-qualifying commercial enterprises which may be being conducted by the farmer or in which the farmer participates on or off the farm. For example:

(a) Farmers who board horses which they are not raising may not legally transport them with a vehicle registered with farm plates, unless:

(A) The horses are owned and being raised by a farmer, who would qualify or is currently qualified for farm plates; and

(B) The horses are being transported on an exchange of labor basis as provided in ORS 805.390 or as provided under ORS 825.024.

(b) A farmer who also operates, works for, or in some way participates in a non-farming business, industry or any other non-farming operation may not use farm registered vehicles in the transportation of supplies, equipment, goods or materials, etc., for the non-farming business, industry or other operation.

(4) A farmer who has farm registered vehicles may loan, rent or lease those vehicles to another farmer who is, or would otherwise be, qualified under ORS 805.310 for farm registration for vehicles of the type and size being borrowed, rented or leased. It shall be the responsibility of the farmer owning loaned, rented or leased farm registered vehicles to insure that:

(a) The farmer to whom the vehicles are loaned, rented or leased is qualified for vehicles of the type and size being loaned, rented or leased; and

(b) The vehicles loaned, rented or leased to another farmer are used only for those uses permitted by Oregon law.

(5) A farmer may use a vehicle registered for farm use to transport firewood, dirt, rock or other material removed from the farm, except items prohibited under ORS 805.390, that the farmer must transport incidental to the regular operation of the farm. Operations under this section must be conducted in the name of the farm.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 805.300 - 805.410.

Stats. Implemented: ORS 805.390

Hist.: MV 20-1983 f. 12-30-83, ef. 1-1-84; MV 12-1984, f. & ef. 9-17-84; MV 3-1986, f. & ef. 1-30-86; Administrative Renumbering 3-1988, Renumbered from 735-071-0088; MV 11-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 10-1996, f. & cert. ef. 11-21-96; DMV 16-2004, f. & cert. ef. 7-15-04

Adm. Order No.: DMV 17-2004

Filed with Sec. of State: 7-15-2004

Certified to be Effective: 7-15-04

Notice Publication Date: 6-1-04

Rules Amended: 735-168-0070

Rules Repealed: 735-168-0020, 735-168-0030, 735-168-0040

Subject: OAR 735-168-0020 through 735-168-0040, related to Class I all terrain vehicle (ATV) registration, are repealed in response to Section 4, Chapter 529, Oregon Laws 2001 (SB 445), which removed the registration requirement for Class ATVs. Currently, Class I ATVs are also exempt from Oregon title requirements. The amendment to OAR 735-168-0070 allows for optional titling of

Class I ATVs under the authority of ORS 803.035 in order to protect the ownership rights of people who purchase these vehicles.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-168-0070

Class I and III ATVs — Optional Title Requirements

(1) Upon request of the vehicle owner, DMV may issue an Oregon title to Class I and Class III ATVs under the provisions of ORS 803.035 if:

(a) The vehicle owner meets the qualifications for title issuance under ORS 803.045;

(b) The owner and the vehicle comply with all applicable state and federal laws, rules and regulations pertaining to titling of vehicles; and

(c) A completed and signed application for Oregon title is submitted to DMV accompanied by all required fees and proof of ownership pursuant to ORS 803.010.

(2) A vehicle issued a title under this rule must remain titled subject to ORS 803.040 and is subject to title transfer requirements under ORS 803.092.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.010 & 803.035

Stat. Imp.: ORS 803.010, 803.035, 803.040, 803.045 & 803.092

Hist.: MV 41-1989, f. & cert. ef. 10-3-89; DMV 1-1997, f. & cert. ef. 1-17-97; DMV 17-2004, f. & cert. ef. 7-15-04

Department of Transportation, Motor Carrier Transportation Division Chapter 740

Adm. Order No.: MCTD 3-2004

Filed with Sec. of State: 6-24-2004

Certified to be Effective: 6-29-04

Notice Publication Date: 4-1-04

Rules Adopted: 740-060-0055, 740-300-0035

Rules Amended: 740-060-0030, 740-060-0050

Rules Repealed: 740-060-0030(T), 740-060-0050(T), 740-060-0055(T), 740-300-0035(T)

Subject: These rules implement Chapter 754, Oregon Laws 2003 (Senate Bill 471), which became effective January 1, 2004. Chapter 754, Oregon Laws 2003 requires a person in the business of providing a pack or load service to register with ODOT. Pack or load service, defined in Chapter 754, Oregon Laws 2003, offers the public an alternative to using a moving company when relocating. Chapter 754, Oregon Laws 2003 directs the Department to adopt rules that establish fees, set minimum levels of insurance and provide registration and renewal standards for persons who provide a pack or load service. The rules also establish the fee amount to be collected from existing household goods carriers and establish civil monetary penalties for persons who provide an unregistered pack or load service or an unauthorized household goods moving service. OAR 740-060-0030 is amended to decrease the time a customer of a household goods carrier has to file a damage claim, from nine months to three months, in compliance with section 12 of SB 471. These permanent rules replace temporary rules effective January 1, 2004. In response to comments, received since the adoption of the temporary rule, related to insurance coverage, the permanent rules provide registrants an option of obtaining a bond in lieu of insurance to indemnify customers' household goods.

Rules Coordinator: Brenda Trump—(503) 945-5278

740-060-0030

General Information for Moving Household Goods in Oregon

The text of the information bulletin, "General Information for Moving Household Goods in Oregon," shall include the following:

(1) The Oregon Department of Transportation requires the mover to give you this bulletin to provide information about purchasing the services of a motor carrier moving company. It tells you about your rights and responsibilities when having household goods moved within Oregon.

(2) Moving company rates and services are regulated by ODOT when the origin and destination of a move are within Oregon.

(3) If, after discussing your move with the mover, you still need information or assistance, you may obtain help by contacting ODOT, 550 Capitol Street NE, Salem, Oregon 97301-2530, (503) 378-5987, or online at: www.odot.state.or.us/trucking/special/moving.htm.

(4) ESTIMATES:

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(a) Estimates are free of charge. You may obtain more than one estimate in order to compare movers and service. Be sure to tell each estimator the same information in order to compare service and quality of estimates;

(b) Estimates must be in writing. An estimate of charges may only be given after a visual inspection of the goods by the mover. Oral or telephone estimates are not permitted;

(c) You should NOT select a mover based solely on the lowest estimate provided because estimates are not binding and may differ from the final cost;

(d) Be cautious if you receive a very low estimate as compared to other estimates. All services may not have been included or it may not be accurate.

(e) **BINDING ESTIMATES OR GUARANTEES OF ACTUAL CHARGES ARE ILLEGAL ON INTRASTATE TRANSPORTATION OF HOUSEHOLD GOODS IN OREGON;**

(f) **FINAL CHARGES FOR MOVES MUST BE BASED UPON RATES PUBLISHED IN THE MOVER'S TARIFF AND APPROVED BY THE PUC OR ODOT, REGARDLESS OF ANY ESTIMATE GIVEN BY THE MOVER PRIOR TO THE MOVE.**

(5) **CHANGES/ADDITIONAL SERVICE REQUIRES AN ADDENDUM ESTIMATE:** When a written estimate of cost for services has been given to you, but additional services (not included on the first estimate) are needed, an addendum estimate must be prepared. This means that if you ask for additional materials or service, or an unforeseen circumstance arises, a second estimate must be given to you. An addendum estimate must clearly show you any extra estimated costs, and be signed by you as authorized.

(6) **ESTIMATES FOR DELIVERY INTO STORAGE:**

(a) If your shipment will be put into storage, be sure to look at the origin and destination address(es) on the estimate. This will tell you if the estimate is for one-way transportation only (into the warehouse), or for the complete trip to the final destination;

(b) If needed, ask for a second estimate of charges for removing your goods from storage and delivering them to the final site;

(c) Be sure the estimate includes the warehouse handling and storage charges. Generally, new storage charges are added monthly.

(7) **UNDERESTIMATES:**

(a) ODOT rules do not allow movers to provide underestimates for service. It is an underestimate if the final charge is higher than 10 percent of the original estimate, and addendum estimate (if any);

(b) ODOT requests that you contact them if this happens so that the situation may be investigated. ODOT may file a formal complaint against a mover for underestimating;

(c) If an underestimate does occur, you must still pay the total tariff charges because estimates are not binding;

(d) If payment is due upon delivery, the amount that must be paid is the estimated (and addendum estimate amount, if any) amount plus 10 percent. The excess amount is the amount above that. You may request deferred payment of the excess amount for 15 days. The 15-day extension does not include Saturdays, Sundays, or holidays.

(8) **HOURLY RATED LOCAL MOVES:**

(a) Local moves are generally within an area of 30 airmiles and are charged for on an hourly basis. Hourly rates depend upon the number of persons and vehicles employed on the job and whether overtime is involved;

(b) No inventory listing is required to be made by the mover on local hourly moves. You may wish to prepare your own inventory and count the items and boxes as they are loaded and unloaded. Discuss this with the mover in advance because a successful loss or damage claim settlement may depend on it.

(9) **INTERCITY MOVES; RATED ON WEIGHT AND MILEAGE:**

(a) An intercity move is generally between cities more than 30 airmiles apart. The rate is published in cents per 100 pounds. The charges increase in relation to the weight of the shipment and the distance moved. Accessorial services are charged separately;

(b) An inventory of items must be prepared by the mover for an intercity shipment prior to loading. The inventory document will be coded to list any pre-existing damage of your goods. This is so that the condition of your goods may be established at origin in case of a later claim;

(c) After completing the inventory, the driver and you should sign each page of the inventory. You have a right to note any disagreement with entries regarding damage or unusual wear noted by the mover. Your ability to recover from the mover for any loss or damage may depend on the notations made;

(d) The driver must give you a copy of each page of the inventory. You should attach your copy of the inventory to your copy of the bill of lading. It is your receipt for the goods.

(10) **PACKING YOURSELF:**

(a) Caution: Generally, a moving company will NOT accept liability for items you pack yourself (unless the mover is negligent in handling the items). Any items you pack must be able to withstand the normal rigors (shaking) of transportation. Discuss this with the mover. Consider asking the mover to pack any fragile items for you;

(b) Do not pack jewelry, money, or valuable papers with your belongings. Never pack matches, flammables, or other dangerous articles.

(11) **VALUATION OPTIONS:**

(a) Notice: A household goods mover's liability for loss or damage caused by the mover is limited in Oregon to 60 cents per pound per article based upon the actual weight of each article;

(b) Additional valuation protection may be purchased from the mover or an insurance company of your own choosing;

(c) You may want to check with your own insurance company first. Ask whether your insurance coverage applies when your goods are transported by a for-hire carrier;

(d) **YOU ARE FREE TO PURCHASE INSURANCE FOR YOUR GOODS FROM SOMEONE OTHER THAN THE MOVER;**

(e) Valuation protection options are available from the mover depending on your declared value of the goods. Movers shall include in their information bulletin the valuation protection option(s) they offer, which may include:

(A) Option 1. Released Value Protection/Almost No Coverage. This type of valuation pays up to 60 cents per pound per article for any lost or damaged article. For example, it would pay a maximum of \$30.00 for a 50-pound table (\$.60 x 50 lbs.). You are not required to pay an extra charge for this option;

(B) Option 2. Depreciated Value Protection. The weight of your goods is multiplied by \$1.25 per pound to figure the value of your goods, or you may declare a lump sum value of your goods. The greater of the two value figures will be used to calculate the amount you must pay for this protection. Ask your mover for the current price of this option. Any items lost or damaged are subject to depreciation under this option;

(C) Option 3. Replacement Cost Protection. The weight of your goods is multiplied by \$3.50 per pound to figure the value of your goods, or you may declare a value of \$10,000 or more. The greater of the two value figures will be used to calculate the amount you must pay for this protection. Ask your mover for the current price of this option. Depreciation does not apply under this option; and

(D) Valuation protection options, other than those found in paragraphs (A), (B) and (C) of this subsection may be offered by the mover, when approved by the Department.

(12) **ADDITIONAL VALUATION INFORMATION:**

(a) Hourly rated shipments are not usually weighed, so a lump sum value must be declared if you wish to purchase depreciated value or replacement cost protection;

(b) If NO option is chosen and signed by you on the bill of lading, the mover will assign depreciated value protection (Option 2 in paragraph (11)(e)(B) of this rule). You will be required to pay the valuation charge for this protection;

(c) Be sure the bill of lading has the option you have chosen before you sign it;

(d) Caution: If the actual value of your goods is higher than the amount you declare on the bill of lading, you may NOT be fully covered. If you are unsure of the value of your goods, you should check your homeowner's policy or call your insurance agent.

(13) **POINTS TO REMEMBER:**

(a) Bill of Lading Contract: The bill of lading is a contract between you and the mover. The mover is required by law to prepare a bill of lading for every shipment it transports;

(b) Get a copy of the bill of lading from the driver who loads the shipment before your goods leave the point of origin. It must show the mover's name, address, and telephone number, the address and telephone number furnished by you to which the mover can send messages regarding your shipment, the location to which your goods are moving, the date of loading, the preferred delivery date and the declared value of your goods;

(c) It is your responsibility to read the bill of lading before you sign it. If you do not agree with something on the bill of lading, do not sign it until you are satisfied that the bill of lading shows what service you want;

(d) The bill of lading requires the mover to provide the service you have requested, and requires you to pay the mover the charges for those

ADMINISTRATIVE RULES

services. The bill of lading is an important document. Do not lose or misplace your copy. Have it available until your shipment is delivered. Keep it until all charges are paid and all claims, if any, are settled;

(e) **Weights:** The transportation charge for an intercity move is based on the actual weight of the shipment and distance moved, plus the charge for any accessororial services provided. If you question the weight reported by a mover, you may request that the shipment be reweighed prior to delivery when scales are available. You may be assessed an extra charge for reweighing.

(14) AT DELIVERY, CHECK FOR LOSS OR DAMAGE:

(a) At the time of delivery, check for missing items and for damage.

If an inventory was prepared, it is your responsibility to check the items delivered against the items listed on the inventory;

(b) If any item is missing, or new damage is discovered, discuss it with the driver. Make a record of the missing or damaged goods on the driver's copy and your copy of the bill of lading or inventory;

(c) After the shipment is unloaded, the driver will request that you sign the bill of lading and/or inventory sheets to show that you received the items listed. Do not sign these documents until your notations have been made if any items are missing or damaged;

(d) A claim settlement may depend on whether these notations were made by you at the time of delivery. Keep any evidence, such as crushed cartons, until the claim is settled.

(15) LOSS OR DAMAGE CLAIMS:

(a) Should your move result in the loss or damage to any of your property, you have the right to file a claim with the mover to recover for such loss or damage. Claims must be filed with the moving company in writing within three months from the date of delivery. You should, however, file a claim as soon as possible. Claim forms may be obtained from the mover;

(b) After receipt of your claim, the mover must:

(A) Acknowledge receipt of your claim by notifying you in writing within 30 days;

(B) Pay, decline, or offer a firm compromise settlement in writing within 120 days of receipt of your claim;

(C) Notify you in writing of the reasons for any delay in settling your claim beyond 120 days;

(D) Continue to notify you in writing of the reason for the delay each 60 days thereafter until the claim is settled.

(c) ODOT does NOT have the authority to settle claims but does enforce these time limits. The mover must send a copy of any delayed claim letter to ODOT. Contact ODOT if the mover does not adhere to these time limits;

(d) The time limit to file suit against the mover is within two years and one day from the date of any claim disallowance received in writing.

(16) READY TO ASSEMBLE FURNITURE:

(a) Moving companies have limited liability on "Ready to Assemble Furniture" with components that are not bordered by solid wood, veneer plywood or metal and structural fasteners that join into one of these materials. "Ready to Assemble Furniture" does not stand up to the normal strains of moving and needs to be fully disassembled prior to your move to avoid loose joints, chipping, and breakage. The cost of repair can exceed the value of this furniture.

(b) If you have purchased furniture second hand, look for fasteners secured into cam locks or into any material other than solid wood, veneer plywood or metal. Review your "Ready to Assemble Furniture" and make sure it is worth moving and decide as soon as possible how you will have it disassembled at origin and reassembled at destination.

(c) Your least expensive option is to disassemble furniture completely and remove and carefully place all hardware, fasteners, pins, cams, handles, wafers and dowels into a clearly labeled box. Your mover will then move these items at the valuation you chose.

(d) Your mover can also arrange for "Ready to Assemble Furniture" to be disassembled and reassembled for you at additional cost. If, however, these items are moved assembled they will be moved at your risk with specific caps on carrier liability.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.202

Hist.: PUC 17-1987, f. & ef. 12-31-87 (Order No. 87-1309); PUC 5-1994, f. & cert. ef. 2-16-94 (Order No. 94-298); MCT 2-1996, f. & cert. ef. 2-16-96; Renumbered from 860-069-0007; MCT 3-1996, f. & cert. ef. 3-14-96; MCT 4-1997, f. & cert. ef. 7-15-97; MCTB 3-2002, f. & cert. ef. 7-24-02; MCTD 9-2003(Temp), f. 12-12-03, cert. ef. 1-1-04 thru 6-28-04; MCTD 3-2004, f. 6-24-04, cert. ef. 6-29-04

740-060-0050

Packing and Loading of Residential Personal Property

(1) A person who provides, or offers to provide, a pack or load service as defined in ORS 825.005(9) must first obtain registration from the

Department as described in section (2) of this rule. Additionally, a person described under this section may not:

(a) Directly or indirectly provide or otherwise be involved in the procurement of a motor vehicle for the movement of residential personal property, including the pickup or return of a leased vehicle, nor act as agent for any person who does; or

(b) Operate a motor vehicle used in the movement of residential personal property, nor arrange for or procure another person to operate the motor vehicle, except for driving the motor vehicle used in the transportation of residential personal property from the origin to the destination of the shipment.

(2) An applicant for an initial pack or load service registration must:

(a) Complete and submit an application form provided by the Department;

(b) Remit the initial application fee described in ORS 825.180(1)(f);

(c) Remit an annual fee of \$100; and

(d) Provide:

(A) A Certificate of Insurance verifying general liability and property damage insurance with single limit coverage of at least \$50,000 and aggregate limit coverage of at least \$150,000; and

(B) Proof of at least \$10,000 insurance coverage against loss or damage to customer's personal property.

(3) A pack or load service provider must renew registration, not later than December 31st of the year preceding the year of proposed operation. Renewal consists of completing and submitting a renewal form provided by the Department and remittance of the \$100 annual fee.

(4) The Department will issue to all persons who meet the requirements of this rule an annual registration document verifying proof of registration as a pack or load service provider.

Stat. Auth.: ORS 823.011, ORS 825.245, 825.246

Stats. Implemented: ORS 825.245, 825.246

Hist.: PUC 12-1993, f. & cert. ef. 6-23-93 (Order No. 93-810); MCT 2-1996, f. & cert. ef. 2-16-96; Renumbered from 860-069-0015; MCT 3-1996, f. & cert. ef. 3-14-96; MCTD 9-2003(Temp), f. 12-12-03, cert. ef. 1-1-04 thru 6-28-04; MCTD 3-2004, f. 6-24-04, cert. ef. 6-29-04

740-060-0055

Additional Fees

Each authorized intrastate household goods carrier must pay an annual fee of \$100 or .1 percent of its gross revenue derived from Oregon intrastate household goods moving activity in the preceding year, whichever is greater. The fee shall be due by April 1 and must be reported on a form provided by the Department. A fee of \$100 will be charged any new intrastate household goods carrier at the time authority is granted. Fees received late will be charged a penalty of 2 percent per month until paid.

Stat. Auth.: ORS 823.011, 825.247

Stats. Implemented: ORS 825.247

Hist.: MCTD 9-2003(Temp), f. 12-12-03, cert. ef. 1-1-04 thru 6-28-04; MCTD 3-2004, f. 6-24-04, cert. ef. 6-29-04

740-300-0035

Providing Unauthorized Pack or Load Service or Household Goods Transportation

Except as otherwise ordered by the Department in a particular case, any person who violates ORS 825.245 by providing a pack or load service without valid registration, or any rule or order related thereto, or who violates ORS 825.100 by providing an unauthorized household goods moving service, or any rule or order related thereto, is subject to civil monetary penalties in the amount of \$500 per violation, in addition to any other penalties authorized by law.

Stat. Auth.: ORS 823.011, 825.245

Stats. Implemented: ORS 825.100, 825.245 & 825.950

Hist.: MCTD 9-2003(Temp), f. 12-12-03, cert. ef. 1-1-04 thru 6-28-04; MCTD 3-2004, f. 6-24-04, cert. ef. 6-29-04

Department of Transportation, Public Transit Division Chapter 732

Adm. Order No.: PTD 1-2004(Temp)

Filed with Sec. of State: 7-15-2004

Certified to be Effective: 7-15-04 thru 1-10-05

Notice Publication Date:

Rules Amended: 732-005-0005, 732-005-0010, 732-005-0027, 732-005-0031, 732-005-0051, 732-010-0010, 732-010-0035

Subject: The amendments to these rules implement Chapter 751, Oregon Laws 2003 (SB 180) which amended ORS 391.800 through 391.830 and became effective July 1, 2003. Chapter 751, Oregon

ADMINISTRATIVE RULES

Laws 2003 requires the Department of Transportation to add federally recognized Indian tribes in Oregon that has members residing on reservations and tribal trust land in Oregon as eligible to receive moneys from the Special Transportation Fund (STF) for the Elderly and Disabled. The amendment to ORS 391.810 (1)(c) specifically requires distribution of moneys to Indian tribes based on "the population of the tribe residing in Oregon" determined by the Oregon Transportation Commission by rule. The tribes cannot receive their share of the funds until these rules are amended. In addition to Chapter 751, Oregon Laws 2003 (SB 180), the Oregon Legislature also passed Chapter 613, Oregon Laws 2003 (HB 3522), which requires the division to establish rules of implementation and accountability for the STF program. These implementing rules, which will affect the tribes as well as the current recipients of the STF moneys, require extreme care due to changes in the basic structure of the program. The division has been working diligently with the Oregon Public Transportation Advisory Committee to amend all of the rules relating to Special Transportation Funds, however, it will be several months before final rules can be adopted permanently. Therefore, the agency must act promptly to amend some of the STF rules to include Indian tribes in order to ensure distribution of funds to the tribes as intended by the legislation.

Rules Coordinator: Brenda Trump—(503) 945-5278

732-005-0005

Statutory Authority and Procedure

Oregon Laws 1985, Chapter 816, Section 10(4), Oregon Laws 1989 Chapter 866, Sections 7, 8, and 11 and Oregon Laws 2003, Chapter 751 Sections 4(1)(c) and 4(4) require the Public Transit Division to adopt rules necessary for the administration of the STF.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05

732-005-0010

Definitions

(1) "Administrative Allotment" — An amount, disbursed annually, for administrative expenses of a governing body in carrying out functions described under ORS 391.800 to 391.830.

(2) "Advisory Committee" — A committee appointed by a governing body to review, advise, and assist in the distribution of moneys from the Special Transportation Fund. Members must be elderly or disabled users or transportation services, transportation providers, representatives of persons who are elderly or disabled, or persons who are elderly or disabled without access to public transportation services.

(3) "Capital Purchase" — Equipment or vehicles that have an acquisition cost of \$1,000 or more.

(4) "Disabled Person" — Any individual who, by reason of illness, injury, advanced age, congenital malfunction, or other permanent or temporary incapacity or disability, may have special requirements in using public transportation facilities and services effectively. This includes any person who uses a wheelchair or has semiambulatory capabilities.

(5) "Discretionary Account" — A Special Transportation Fund account for distribution of the remaining cigarette tax receipts set aside following distribution of the three-quarter per capita formula allocation, minimum allocation and administrative allotment.

(6) "District" — As used in these rules, a mass transit district or a transportation district.

(7) "Elderly person" — Any individual 60 years of age or older.

(8) "Formula Allocation" — An amount of STF moneys made available to a governing body on the basis of the district's, county's or Indian tribe's share of resident population in proportion to the population of the state as a whole, determined in accordance with OAR 732-010-0010.

(9) "Governing Body" — The board of directors of any district or the governing body of a county or Indian tribe receiving moneys from the STF.

(10) "Indian tribe" — A federally recognized Indian tribe in Oregon that has members residing on a reservation or tribal trust lands in Oregon.

(11) "List of Services" — A summary provided to the Public Transit Division by a district or county listing the proposed number of rides, the type of service and budget for providers receiving moneys from the Special Transportation Fund.

(12) "Mass Transit District" — A special district organized under ORS 267.010 to 267.390.

(13) "Minimum allocation" — A minimum annual amount for which each district or county shall be eligible. Each governing body shall have no less than the minimum allocation made available, irrespective of population, under the STF Formula Program.

(14) "Project" — A service or capital purchase eligible for funding by the Formula Program or the Discretionary Grant Program which falls within the purposes defined in OAR 732-005-0000. A project may include, but is not limited to, planning and needs assessment, training, research, demonstration, capital, and operating requests.

(15) "Provider" — Any city, county, district, Indian tribe, or any other person or agency, whether public or private, that maintains, operates, or sponsors vehicles and facilities for the transportation of passengers for profit or on a nonprofit or voluntary basis.

(16) "Public Transportation Services" — Any form of mass transportation by bus, rail or other conveyance, either publicly or privately owned, which provides service to the general public not including charter or sightseeing or exclusive school bus) on a regular and continuing basis. Such transportation includes purposes such as health care, shopping, education, employment, public services, personal business or recreation.

(17) "Representative of Disabled Persons" — An individual, designated by a governing body, who is familiar, knowledgeable or aware of the transportation needs of disabled persons. For example, such an individual could be a member of an organization that provides assistance to or representation of disabled individuals

(18) "Representative of Elderly Persons" — An individual, designated by a governing body, who is familiar, knowledgeable or aware of the transportation needs of elderly persons. For example, such an individual could be a member of an organization that provides assistance to or representation of elderly individuals.

(19) "Special Transportation Fund for Elderly and Disabled (STF)" — Moneys generated by a tax on cigarettes, or from other sources, appropriated to the Public Transit Division for distribution to providers of transportation for the purpose of financing and improving transportation programs and services for the elderly and disabled.

(20) "Division" — The Oregon Department of Transportation, Public Transit Division.

(21) "Transportation District" — A special district organized under ORS 267.510 to 267.650.

(22) "User of Transportation Services" — An elderly or disabled person who makes use of transportation programs and services for the elderly and disabled.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990 f. & cert. ef. 5-31-90; PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05

732-005-0027

Eligible Recipients of STF Moneys

(1) STF moneys may be distributed to the following:

(a) To districts where they exist;

(b) To counties where no districts exist; and

(c) To federally recognized Indian tribes in Oregon that has members residing on a reservation or tribal trust lands in Oregon.

(d) If two or more districts are located in one county, the monies shall be distributed to the mass transit district. If there is no mass transit district located in the county, then the moneys shall be distributed to the transportation district with highest population.

(2) Districts, Indian tribes and counties receiving STF moneys are known as governing bodies.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.810

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0015(1)(a-c); PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05

732-005-0031

STF Local Advisory Committee Requirements

(1) The governing body of each mass transit district, transportation district, Indian tribe or county that is eligible to receive STF moneys shall appoint an advisory committee to advise and assist the governing body.

(2) To be qualified to serve on an advisory committee of an Indian tribe, an individual must be able to represent the transportation needs of elderly and disabled persons served by the Indian tribe as determined by the Indian tribe.

ADMINISTRATIVE RULES

(3) To be qualified to serve on the advisory committee for a district or county an individual shall:

- (a) Reside in the county; and
- (b) Be an elderly or disabled user of transportation services in the district or county; or
- (c) Be an individual who represents a service that is engaged in providing transportation services to the elderly or disabled within the district or county. The provider representative may reside outside the district or county;
- (d) An elderly or disabled person who lives in an area of the district or county where there are no public transportation services;
- (e) A representative of elderly persons; or
- (f) A representative of disabled persons.

(4) Members and employees of the governing body of a district or county may not serve as voting members on the advisory committee.

(5) The purpose of the advisory committee is to advise and assist the governing body in carrying out the purposes of the STF:

(a) The advisory committee may consider specific providers, services and funding levels for elderly and disabled transportation and submit recommendations to the governing body;

(b) The advisory committee shall review the proposed distribution of formula moneys by the governing body;

(c) The advisory committee shall review STF discretionary grant proposals and make recommendations to the governing body;

(d) The advisory committee may propose any changes to the proposed STF distribution it considers necessary;

(e) The advisory committee, in carrying out its functions, may review proposals, evaluate needs, consider costs of service, evaluate service quality, review operating policies, monitor performance, and receive operating reports.

- (6) The advisory committee shall:
 - (a) Adhere to Oregon Public Meetings Laws at all meetings;
 - (b) Have at least three voting members;
 - (c) Meet a sufficient number of times so as to advise the governing body in carrying out the purposes of the STF.

(7) The number and terms of the members of the advisory committee shall be determined by the governing body.

(8) The governing body shall notify the Division of advisory committee membership, including changes in membership by filing a Roster of Advisory Committee Members with its application for funds or by filing an amended Roster of Advisory Committee Members.

(9) The governing body shall make copies of advisory committee minutes and meeting notices available to the Public Transit Division upon request.

Stat. Auth.: ORS 184.616, ORS 184.619 & ORS 391.810
Stats. Implemented: ORS 391.820
Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1986, f. & ef. 1-10-86; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0065; PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05

732-005-0051 Reporting Requirements

- (1) Purpose:
 - (a) To ensure that STF moneys are being used for the purpose of financing and improving transportation programs for the elderly and disabled;
 - (b) To measure the effects of the program;
 - (c) To provide information to the legislature.
- (2) Requirements:
 - (a) The district, Indian tribe or county shall submit, or require its providers to submit, a quarterly report to the Public Transit Division;
 - (b) For projects funded by the Formula Program, a report form, provided by the Division, shall be completed for each provider on the list of services. The reports shall contain information about the nature and scope of services provided;
 - (c) The county, Indian tribe or district may require additional reporting information from its providers;
 - (d) Reports shall be due within 45 days following the end of a quarter;
 - (e) For projects funded by the discretionary program, a report form will be provided by the Division to be completed as required.

Stat. Auth.: ORS 184.616, 184.619 & 391.810
Stats. Implemented: ORS 391.810 - 391.830
Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0085; PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05

732-010-0010 Formula Distribution

For those STF moneys distributed by formula:
(1) Each governing body will receive a portion of the STF moneys based on the District's, Indian tribe's or County's share of the state's population.

(a) The population will be determined by the population of cities, reservation and off-reservation trust lands, and counties based on the federal decennial census.

(b) Each Indian tribe will receive moneys as the population residing in Oregon on reservation and off-reservation trust lands.

(A) Tribal population is defined as the population residing on reservation and off-reservation trust lands, inclusive of tribal and non-tribal members.

(B) The population numbers for Indian tribes will be subtracted from the county populations wherein the reservations and trust lands are located when calculating the formula distribution for districts or counties.

(2) The population statistics for Counties and Districts shall be determined by the most recent annual estimate of population of cities and counties by the State Board of Higher Education (ORS 190.510 to ORS 190.610).

(3) The Public Transit Division shall estimate distributions each January to be effective the following July 1. If necessary, the estimate may be adjusted to reflect actual tax receipts.

(4) The Public Transit Division shall distribute STF monies regularly.
Stat. Auth.: ORS 184.616, 184.619 & 391.810
Stats. Implemented: ORS 391.810
Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0015(2-5); PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05

732-010-0035 Distribution of STF Formula and Minimum Allocation Moneys by the Governing Body

- (1) Distribution by districts:
 - (a) Each district that receives STF moneys shall distribute those moneys to providers of transportation for the purpose of financing and improving transportation programs and services for the elderly and disabled residents of the district and the county(s) in which all or a portion of the district is located;

(b) The district is responsible for funding providers both within its boundaries and outside them in the surrounding county(s);

(c) Services outside the district shall receive a proportionate amount of the STF based on the population outside the district;

(d) The proportion shall be based on the last federal decennial census.

(2) Distribution by Indian tribes and counties: Each Indian tribe and county that receives STF moneys shall distribute those moneys to providers of transportation for the purpose of financing and improving transportation programs and services for the elderly and disabled residents of the county.

(3) The governing body of a district, Indian tribe or county shall:

(a) Consult with its advisory committee; determine the amount of money to be distributed to a provider of transportation and the purposes for which the money must be used;

(b) Assure that the funds are to be used for purposes permitted in these regulations;

(c) Assure that providers included in the list of services continue to use the funds for the purposes permitted in these regulations; and

(d) Distribute the funds on a regular basis to the providers included in the list of services submitted to the Public Transit Division.

(4) STF moneys shall be received and disbursed from a separate governmental fund.

(5) If any interest is earned by the governing body from investments of STF moneys it shall remain in the local STF account and shall be used for the local STF program.

(6) The governing body shall enter into written agreements with transportation providers.

Stat. Auth.: ORS 184.616, 184.619 & 391.810
Stats. Implemented: ORS 391.810
Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0045; PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05

Health Licensing Office Chapter 331

Adm. Order No.: HLO 2-2004
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Notice Publication Date: 3-1-04

Rules Amended: 331-405-0020, 331-405-0030, 331-410-0000, 331-410-0010, 331-410-0020, 331-410-0030, 331-410-0040, 331-410-0050, 331-410-0060, 331-410-0065, 331-410-0080, 331-410-0090, 331-415-0000, 331-415-0010, 331-415-0020, 331-420-0000, 331-420-0020, 331-425-0010, 331-430-0030

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

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

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

331-405-0020

Definitions

The following definitions apply to OAR chapter 331, divisions 400 through 430:

(1) "Agency" means the Health Licensing Office. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(2) "Board" means, pursuant to ORS 680.556, the entity that advises the agency on matters relating to the practice of denture technology. The agency director controls the regulatory operations and has decision-making authority on all substantive matters.

(3) "Clinical procedures" means those procedures in the practice of denture technology as set forth in ORS 680.500(5)(b).

(4) "Contact hours" means academic classroom or course work hours including but not limited to workshops, symposiums, seminars, or laboratory exercises. Contact time does not include personal travel time to or from the training site, registration or check-in periods, breaks or lunchtime granted during attendance at any continuing education seminar or course.

(5) "Dentist" as used in ORS 680.510, and 680.545, and OAR 331-410-0000 and 331-410-0010 means a person holding a degree in dentistry and licensed to practice in the jurisdiction in which the practice occurred.

(6) "Direct supervision" means the supervisor is present in the facility for the purpose of providing oversight and training to a person who has not completed the training requirements stated in OAR 331-410-0010, which includes the 1,000 hours of clinical and laboratory training required in ORS 680.515(1)(b).

(7) "Director" means the individual who is responsible for the performance of the agency as defined in ORS 676.610. The director appoints all subordinate officers and employees to carry out the duties of the agency.

(8) "Employed by" means other than independent contractor relationship and does not require remuneration.

(9) "Equivalent" means substantially comparable but not identical, covering the same subject matter.

(10) "General supervision" means the supervisor is not required to be on the premises after completion of the 1000 hours of clinical and laboratory training defined subsection (19) of this rule, while a person undergoing completion of training requirements in OAR 331-410-0000 performs the procedures. General supervision shall not exceed a two-year period.

(11) "Health Licensing Office" means the agency.

(12) "Informed Consent" means the consent obtained following a thorough and easily understood explanation to the patient, or patient's guardian, of the proposed procedures, any available alternative procedures and any risks associated with the procedures. Following the explanation, the licensee shall ask the patient, or the patient's guardian, if there are any questions. The licensee shall provide thorough and easily understood answers to questions asked.

(13) "Laboratory procedures" means those procedures in the practice of denture technology as set forth in ORS 680.500(5)(a).

(14) "Official transcript" means an original document certified by a school or educational institution, on a form approved by the Department of Education or regulating authority, delivered from the school to the agency by mail or courier, which includes:

(a) School name and location;

(b) Student's name, address and date of birth;

(c) Enrollment and completion or termination dates;

(d) Hours and types of course work;

(e) Final examination scores;

(f) School seal or stamp;

(g) Signature of authorized school representative or registrar.

(15) "Oral pathology" means the pathology that deals with the nature, identification, and management of diseases affecting the oral and maxillo-facial regions. It is a science that investigates the causes, processes, and effects of these diseases.

(16) "Premises" means the structure in which laboratory and/or clinical procedures are performed, not necessarily the same room in which procedures take place.

(17) "Predominant" means located within the place of business and positioned so it may be seen and read without difficulty by consumers who have entered the place of business.

(18) "Restoration" means licensure of a previously licensed person, who has not made application for renewal within three years of expiration of the previous license.

(19) "1,000 hours in the practice of denture technology under direct supervision" or "1,000 hours of clinical and laboratory training in an approved work experience program" means engaging in the clinical and laboratory procedures of the practice of denture technology, over a period of not less than six months and not more than two years pursuant to ORS 680.510(3), with a minimum of 400 hours devoted to clinical procedures. The 1,000 hours under direct supervision shall include construction of no less than 40 units of upper or lower dentures, with a set counting as two units, and must include at least one each of the following: full, immediate, removable partial, removable implant and over-denture.

(20) "Treatment" means the clinical or laboratory procedures in the practice of denture technology.

(21) "Valid license" means the authority to practice pursuant to ORS 680 that has not been revoked, suspended, or expired without renewal.

Stat. Auth.: ORS 680.565

Stats. Implemented: ORS 680.565

Hist.: HD 11-1979(Temp), f. & ef. 8-23-79; HD 2-1980, f. & ef. 2-14-80; HD 12-1981(Temp), f. & ef. 7-15-81; HD 1-1983, f. & ef. 1-20-83; HD 4-1988, f. & cert. ef. 3-4-88; HD 25-1988 (Temp), f. & cert. ef. 11-1-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 10-1989, f. & cert. ef. 11-21-89; HD 13-1991(Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0005; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 1-2003, f. 1-21-03, cert. ef. 2-1-03; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-405-0030

Fees

(1) Applicants and licensees are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Health Licensing are as follows:

(a) \$495 — Initial denturist license or relicensure fee.

(b) \$495 — Denturist license renewal fee.

(c) \$50 — Delinquency fee (late renewal).

(d) \$150 — Restoration of license fee.

(e) \$50 — Replacement or duplicate license fee.

(f) \$100 — Application fee.

(g) Scheduled examination or re-examination fees:

(A) \$275 — Written examination;

(B) \$525 — Practical examination.

Stat. Auth.: ORS 676.605, 676.615, 680.525

Stats. Implemented: ORS 676.605, 676.615, 680.525

Hist.: HD 11-1979(Temp), f. & ef. 8-23-79; HD 2-1980, f. & ef. 2-14-80; HD 11-1981(Temp), f. & ef. 7-15-81; HD 9-1985(Temp), f. & ef. 5-24-85; HD 15-1985, f. & ef. 9-4-85; HD 25-1988(Temp), f. & cert. ef. 11-1-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 13-1991(Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0005; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 3-2003, f. 5-6-03, cert. ef. 5-15-03; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-410-0000

Training

(1) Training, or formal education, required for licensure is a planned sequence of instruction of specific content, pursuant to ORS 680.515, structured to meet stated curriculum objectives which includes evaluation of

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attainment of those objectives; offered by a post-secondary educational institution or equivalent training as determined following evaluation by educational professional(s) from the Governor's Office of Education Work Force Policy/Office of Degree Authorization. The Governor's Office of Education and Work Force Policy/Office of Degree Authorization will be consulted in the evaluation of the program, including but not limited to school accreditation, instructor credentials, and lecture and lab hours as they equate to standard academic credit hours.

(2) The education or training to be approved by the agency pursuant to ORS 680.515(2) in consultation with the Board, shall meet the curriculum objectives as established by the agency. A current list of approved training courses is available at the agency.

(3) All individuals or institutions requesting approval of a course or training program must submit a copy of the curriculum, a list of educational materials, books audiovisual aids, and a copy of handouts and tests to the agency for review to ensure the program meets established training standards and curriculum objectives. The following conditions will apply:

(a) No curriculum shall be approved without submission of complete curriculum documentation;

(b) The agency shall retain a copy of the approved curriculum on file as part of the official permanent record;

(c) Approved education and training program curricula shall be reevaluated for approval every three years or when any portion of the curriculum is modified, or where changes in denture technology or health practices make it necessary. Approved programs existing on the effective date of this rule are subject to immediate re-evaluation, whichever occurs first; and

(d) The agency shall incur any reasonable duplication costs associated with complying with the provisions mandated in ORS 680.515.

(4) A work experience program for completion of the additional 1,000 hours of training required for examination or re-examination in accordance with ORS 680.515(1)(b) and (c) is considered approved by the agency if it is directly supervised by an approved school. Completion of the additional hours of training may also be awarded provided an individual is employed to perform denture technology under the direct supervision of a licensed dentist or licensed denturist who has met the following requirements:

(a) Applies on forms provided by the agency prior to commencing direct supervision and training of any individual;

(b) Holds a valid license issued from a State Board of Dentistry or a State Board of Denture Technology, and has been in active practice for the past three years;

(c) Holds an oral pathology endorsement if training and supervision is to be conducted by a licensed denturist;

(d) Operates an on-site laboratory and clinic where the direct supervision and training will occur;

(e) Certifies that training provider and facility, where the direct supervision and training will occur, is in compliance with all provisions of Division 420 Practice Standards;

(f) Limits direct supervision and training to two denturist trainees at any given time;

(g) Undergoes Board review of licensing record, if licensee has been subject to disciplinary action, to determine whether the discipline is germane to qualification as a trainer;

(h) Limits training under direct supervision to two years pursuant to ORS 680.510(3);

(i) Obtains a signed informed consent from clients before an individual in training status performs services. An individual in training status must be clearly identified to clients.

(5) Credit for courses previously taken can be counted toward completion of schooling requirements for a denture technology program, provided the courses were completed within the five years immediately prior to making application and cover those subjects listed in ORS 680.515(1)(a).

(6) Documentation to prove completion of an Associate Degree program in denture technology shall be official school transcripts from the agency approved schools or the equivalent, and may include published course outlines showing that training included curriculum objectives as determined by the agency in consultation with the Board and the Governor's Office of Education Work Force Policy/Office of Degree Authorization.

(7) Documentation to prove additional training to satisfy ORS 680.515(1)(b) in a work experience program shall be:

(a) Official transcripts as defined in OAR 331-405-0020(14) from the approved school, including a description of training content, hours of clinical and laboratory training, examination scores, school location, dates of attendance, and the name of the supervisor; or

(b) Signed statement from the dentist or denturist certifying dates of training, places of employment, description of training content, and verification that work included both clinical and laboratory procedures as defined in OAR 331-405-0020(3) and (13).

(8) Any denturist trainee who makes more than two (2) changes in supervision must receive approval from the Board prior to making another change in their supervision and training.

Stat. Auth.: ORS 676.605, 676.615, 680.515

Stats. Implemented: ORS 676.605, 676.615, 680.515

Hist.: HD 11-1979(Temp), f. & ef. 8-23-79; HD 2-1980, f. & ef. 2-14-80; HD 1-1983, f. & ef. 1-20-83; HD 4-1989, f. & cert. ef. 6-1-89; HD 10-1989, f. & cert. ef. 11-21-89; HD 13-1991(Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0040; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 1-2003, f. 1-21-03, cert. ef. 2-1-03; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-410-0010

Documentation of Experience

(1) Applicants shall have completed at least 1,000 hours in the practice of denture technology under direct supervision. Such practice shall have been under the direct supervision of: an approved school, a licensed dentist or licensed denturist, while employed by the dentist or denturist.

(2) Any person making application shall submit documentation of denture technology experience or equivalent in practice as follows:

(a) For practice under the direct supervision of an approved school, transcript or completion document from the school certifying at least 1,000 hours under direct supervision.

(b) For practice in the employment of a dentist or denturist, a statement on forms provided by the Health Licensing Office of verification of employment and practice from the dentist or denturist that includes the dates of employment, number of hours worked in each category, and number of denture units constructed and fitted. The statement shall be signed by the dentist or denturist and the individual who received training. The statement shall be mailed or delivered from the dentist or denturist to the Health Licensing Office.

(3) Documentation of denture technology experience will not be accepted if it is incomplete, not signed or includes work experience obtained prior to approval of the direct supervision and training relationship by the Board under OAR 331-410-0000(4).

Stat. Auth.: ORS 680.515 & 680.565

Stats. Implemented: ORS 680.515 & 680.565

Hist.: HD 11-1979(Temp), f. & ef. 8-23-79; HD 2-1980, f. & ef. 2-14-80; HD 25-1988(Temp), f. & cert. ef. 11-1-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 10-1989, f. & cert. ef. 11-21-89; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0025; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-410-0020

Qualification; Application for Examination

(1) Individuals applying for licensure to practice denture technology must meet the requirements of OAR 331-030-0000, in addition to the provisions of this rule.

(2) Applicants must submit a completed application form prescribed by the agency, which shall contain the information listed in OAR 331-030-0000(5), be accompanied by payment of the appropriate fees, and include documentation evidencing completion of necessary training and experience requirements in accordance with OAR 331-410-0000 and 331-410-0010.

(3) Practical Exam Requirement: To be scheduled for a practical examination, applicants must submit documentation and appropriate fees at least 30 calendar days prior to the examination date. A schedule of practical examination dates is available at the Health Licensing Office.

(4) Except as provided in OAR 331-410-0030(4), applicants shall apply to take the entire examination and submit the total examination fee.

(5) Applicants must submit a new application, documentation and fees if they fail to attain licensure within two years of the initial application date or the date of last examination attempt, whichever date is later.

Stat. Auth.: ORS 680.515 & 680.565

Stats. Implemented: ORS 680.515 & 680.565

Hist.: HD 11-1979(Temp), f. & ef. 8-23-79; HD 2-1980, f. & ef. 2-14-80; HD 25-1989(Temp), f. & cert. ef. 11-1-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 10-1989, f. & cert. ef. 11-21-89; HD 13-1991(Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0015; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HDLP 1-2002, f. 5-31-02, cert. ef. 6-1-02; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-410-0030

Examinations

(1) After the Health Licensing Office determines training and experience qualifications have been met, applicants will be notified of their eligibility to take or schedule an examination.

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(2) The examination will consist of two parts: a written portion and a practical portion. The written portion will consist of multiple-choice questions; the practical portion will be in the form of a demonstration of skills. Content will include the subject areas in ORS 680.515(1)(a) and may include questions about the laws and rules regulating the practice.

(3) The Health Licensing Office will notify each examination candidate, in writing by regular US Postal Service, of the results of his/her examination score within 30 days from the date of the examination. Results will not be given by any other means.

(4) The applicant must satisfactorily complete all parts of the examination to pass. Those that fail may repeat the parts not passed upon submission of a supplemental application for examination, examination fee for each part to be retaken, and documentation of additional training if applicable.

(5) Passing score for the written examination is 70 percent or higher. The practical examination is scored on a pass or fail basis. The portions will be scored individually, not added or averaged together.

(6) Passing scores will be maintained towards meeting licensure requirements only for the periods set forth in OAR 331-410-0020(5).

(7) Applicants taking the examination will be required to present photographic identification such as a driver's license and their original Social Security card at the examination.

(8) Pursuant to ORS 680.515(1)(c), an applicant who fails the practical examination must complete an additional 1000 hours of clinical and laboratory training as defined in OAR 331-405-0020(19) under direct supervision for a period not to exceed one year.

(9) An applicant, who fails to pass the written or practical examination on the third attempt, must apply to the Board and receive authorization before application for re-examination will be approved. The Board may require the applicant to undergo additional training before taking the examination a fourth or subsequent time.

(10) Notwithstanding ORS 680.515(1)(c), failed sections of the examination may be retaken at the next available examination date and time as scheduling allows. Retaking a failed examination requires the applicant to register for the examination and submit payment of the examination fees.

Stat. Auth.: ORS 680.520 & 680.565

Stats. Implemented: ORS 680.520 & 680.565

Hist.: HD 11-1979(Temp), f. & ef. 8-23-79; HD 2-1980, f. & ef. 2-14-80; HD 1-1983, f. & ef. 1-20-83; HD 25-1988(Temp), f. & cert. ef. 11-1-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 10-1989, f. & cert. ef. 11-21-89; HD 13-1991(Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0030; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HDLP 5-2001, f. & cert. ef. 12-14-01; HDLP 1-2002, f. 5-31-02, cert. ef. 6-1-02; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-410-0040

Examination Conduct; Disqualification

(1) Examinations are conducted in a designated area with restricted access. Authorization must be provided by the agency before bringing any material or electronic equipment or devices into the examination. Receiving or attempting to receive assistance during the examination, including assistance from other individuals, from notes books or devices or taking unauthorized items into the examination area shall invalidate the examination and result in forfeiture of the examination and fees.

(2) Examination Disqualification: A candidate may be immediately disqualified during or after the examination for conduct that interferes with the examination. Such conduct includes:

(a) Giving or attempting to give assistance to others in answering questions during the examination;

(b) Receiving or attempting to receive assistance during the examination, including assistance from other individuals from notes, books or devices to answer questions;

(c) Removing or attempting to remove any secure examination-related information, notes, or materials from the examination site;

(d) Failing to follow directions relative to the conduct of the examination;

(e) Exhibiting behavior which impedes the normal progress of the examination; and

(f) Endangering the health or safety of a person involved in the examination.

(3) Disqualification will invalidate the examination and result in forfeiture of the examination and fees. The candidate will be required to reapply, submit additional examination fees, and request in writing to schedule another examination. Reexamination will be scheduled at a date, time and place determined by the Director following the date of disqualification.

Stat. Auth.: ORS 680.520 & 680.565

Stats. Implemented: ORS 680.520 & 680.565

Hist.: HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-410-0050

Examination Review and Appeal

Pursuant to ORS 183.435, applicants who fail to attain licensure as a result of test scores are not entitled to a formal appeal or hearing. Practical examination results are not challengeable.

(1) Computer Examination Segment: Review of the written examination, conducted by use of a touch screen computerized system, is provided at the conclusion of each examination question/answer selection, or at the next available date and time as scheduling allows.

(2) Written Examination Segment: Review of failed written examination question/answer selections, conducted by use of paper/pencil and score sheet, is provided upon submitting written request to the agency within seven calendar days of the examination date.

(3) Procedures for reviewing a failed written examination may be obtained from the agency.

Stat. Auth.: ORS 680.520 & 680.565

Stats. Implemented: ORS 680.520 & 680.565

Hist.: HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-410-0060

Licensure Issuance

(1) Pursuant to ORS 680.505, a person shall not practice denture technology or claim to be a dentist including that a person shall not display a sign or in any way advertise or purport to be a license holder or to be engaged in the practice of denture technology without first obtaining a license under ORS 680.515.

(2) Licensees are subject to the provisions of OAR 331-030-0010 regarding the issuance and renewal of a license, and to the provisions of OAR 331-030-0020 regarding the authorization to practice, identification and the requirements for issuance of a duplicate authorization.

Stat. Auth.: ORS 676.605, 676.615, 680.525, 680.530, 680.565

Stats. Implemented: ORS 676.605, 676.615, 680.525, 680.530, 680.565

Hist.: HD 25-1988(Temp), f. & cert. ef. 11-1-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 13-1991(Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0032; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HDLP 1-2002, f. 5-31-02, cert. ef. 6-1-02; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-410-0065

License Renewal

(1) RENEWAL: The following are prerequisites to license renewal:

(a) The completed application for renewal submitted in advance of the license expiration date;

(b) The renewal fee; and

(c) Attestation of having obtained required continuing education pursuant to OAR 331-415-0010.

(2) LATE RENEWAL: Renewal applications received in the Health Licensing Office, or postmarked, within one year after the expiration date may be approved upon payment of the renewal and delinquency fees and required attestation of having obtained sufficient continuing education.

(3) RESTORATION: A person who submits a completed renewal application after one year but within three years from the date of expiration, may be granted a license upon payment of restoration and license fees, and submission of evidence of sufficient continuing education as required in OAR 331-415-0010. A person who does not meet continuing education requirements within the three-year reporting cycle, must reapply and meet all requirements for licensure in place at the time of application.

(4) RE-APPLICATION/QUALIFICATION: A person who fails to renew within three years following the date of expiration, may be granted a license upon reapplication, payment of license and/or examination fee(s), as applicable, and submission of evidence of clinical competence satisfactory to the Health Licensing Office as follows:

(a) Documentation, showing the person engaged in active practice of denture technology in another state or territory during at least two of the last three years preceding reapplication, verifying construction of no less than 40 units of upper or lower dentures (a set counting as two units), and must include at least one each of the following: full, immediate, removable partial, removable implant and over-denture. Documentation must include verification of work experience /employment and copies of patient treatment records; or

(b) Attain a passing score on the written and practical examination conducted by the Health Licensing Office, as prescribed by the Board.

(5) A person who previously held an Oregon dentist license without an oral pathology endorsement does not qualify for licensure under reapplication provisions in subsection (4) of this rule. A person must meet all requirements of OAR 331-410-0010 and 331-410-0020 to qualify for an Oregon dentist license.

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Stat. Auth.: ORS 676.605, 676.615, 680.525, 680.530, 680.565
Stats. Implemented: ORS 676.605, 676.615, 680.525, 680.530, 680.565
Hist.: HDLP 1-2002, f. 5-31-02, cert. ef. 6-1-02; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-410-0080

Oral Health Certificate

(1) Denturists licensed prior to January 1, 2004, who have not received an oral pathology endorsement as described in ORS 680.545 may not treat any person without a valid Oral Health Certificate for the person stating the person's oral cavity is substantially free from disease and mechanically sufficient to receive a denture.

(2) A valid Oral Health Certificate shall be in the form prescribed by the Health Licensing Office, signed by a licensed dentist or physician (M.D. or D.O.) stating that the person's cavity is substantially free from disease and mechanically sufficient to receive a denture, and show an examination of the oral cavity took place within 30 days of the date of commencing treatment.

(3) Oral Health Certificate forms are available at the agency.

Stat. Auth.: ORS 680.545

Stats. Implemented: ORS 680.545

Hist.: HD 12-1980(Temp), f. & ef. 9-29-80; HD 6-1981, f. & ef. 4-3-81; HD 4-1988, f. & cert. ef. 3-4-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0055; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-410-0090

License Display

Denturists shall post their current license to practice denture technology in public view.

Stat. Auth.: ORS 680.565

Stats. Implemented: ORS 680.565

Hist.: HD 12-1980(Temp), f. & ef. 9-29-80; HD 6-1981, f. & ef. 4-3-81; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0060; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-415-0000

Purpose

(1) To ensure continuing efforts on the part of Oregon licensed denturists to remain current with new developments in the denture technology and health care field and to encourage diversified training and qualifications in the profession continuing education is required as a condition of licensure.

(2) Continuing education requirements apply whether the applicant renewing a license is living or working within Oregon or outside of the state so long as Oregon licensure is maintained.

(3) Continuing education is required for renewal, every three years, even if the dentist license has been inactive during that period.

Stat. Auth.: ORS 680.530

Stats. Implemented: ORS 680.530

Hist.: HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-415-0010

Continuing Education Requirements

(1) Each dentist must complete 30 contact hours of continuing education every three years from the date of licensure to qualify for renewal of the dentist's license. Six of the required 30 hours must be directly related to partial denture services.

(2) Each dentist shall report compliance with the continuing education requirement through attestation on the license renewal document. Licensees shall be subject to the provisions of OAR 331-415-0020 pertaining to the periodic audit of continuing education.

(3) Continuing education includes attendance or participation at an instructional program presented, recognized, or under the auspices of any permanently organized institution, agency, or professional organization or association. For example, lectures, post-secondary school or post-graduate courses, scientific sessions at conventions, teaching (provided that no more than half the required hours be in teaching), or correspondence courses, or video tapes, or similar self-study provided an examination is taken and passed as part of the course.

(4) Subject matter shall be related specifically to denture technology as set forth in ORS 680.515(1)(a), the law and rules regulating licensed denturists, science, related dental practices, health care professional concerns such as infection control or medical emergencies, ethics, and business practices. A Board member will be designated to review the content of continuing education courses upon request by Health Licensing Office staff.

(5) Proof of participation in required continuing education is the responsibility of the dentist. To ensure that adequate proof of attainment of required continuing education is available for audit or investigation by the Health Licensing Office, denturists shall maintain a record of atten-

dance for two years following the three-year continuing education cycle and renewal of the dentist license.

(6) Hours obtained in excess of the 30 contact hours required each three-year period will not be carried forward as credit for the succeeding three year continuing education requirement.

Stat. Auth.: ORS 676.605, 680.530, 680.565

Stats. Implemented: ORS 676.605, 680.530, 680.565

Hist.: HD 10-1989, f. & cert. ef. 11-21-89; HD 13-1991 (Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0041; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-415-0020

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Health Licensing Office will audit a select percentage of licensee records determined by the Board to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation shall submit to the agency, within 30 calendar days from the date of issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-415-0010.

(3) Documentation of a certificate of completion of attendance at a program or course provided by the sponsor must include:

(a) Name of sponsoring institution/association or organization;

(b) Title of presentation and description of content;

(c) Name of instructor or presenter;

(d) Date of attendance and duration in hours;

(e) Course agenda;

(f) Official transcript, diploma, certificate, statement or affidavit from the sponsor, attesting to attendance.

(4) If documentation of continuing education is invalid or incomplete, the licensee must correct the deficiency within 30 calendar days from the date of notice. Failure to correct the deficiency within the prescribed time shall constitute grounds for disciplinary action.

(5) Misrepresentation of continuing education, or failing to meet continuing education requirements or documentation may result in disciplinary action, which may include but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth.: ORS 680.565

Stats. Implemented: ORS 680.565

Hist.: HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98; HDLP 1-2002, f. 5-31-02, cert. ef. 6-1-02; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-420-0000

Practice Standards

Licensed denturists shall adhere to the following practice standards:

(1) Oral Health Certificate. Denturists must either have an oral pathology endorsement on their license, or if they have not qualified for and received the endorsement, must comply with requirements for obtaining an Oral Health Certificate as described in ORS 680.545 and OAR 331-410-0080.

(2) Patient Documentation. Licensed denturists must record, update and maintain documentation for each patient relevant to health history, clinical examinations and treatment, and financial data. Documentation shall be written or computerized. Records should include the following information:

(a) Patient data, including name, address, date and description of examination;

(b) Evidence of informed consent (may be in the form of an acronym such as "PARQ" to denote procedure, alternatives, risks and questions);

(c) Date and description of treatment or services rendered, and any treatment complications;

(d) Health history as applicable; and

(e) Any other information deemed appropriate to patient care.

(3) Clinical Examination. Licensed denturists must conduct and record a clinical examination of each patient that will include at a minimum, information relative to:

(a) Appearance of gingiva, oral mucosal membranes, pharynx, tongue and all other oral soft tissue; and

(b) Oral conditions that may affect successful denture construction and use.

(4) Record Retention. Patient documentation, written or archived electronically by computer, must be retained for a minimum of seven years and available upon request by the agency.

(5) Minimum Standards of Acceptable Patient Care. Licensees must adhere to the following practice standards in rendering acceptable patient care:

(a) Maintain accurate patient records;

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- (b) Provide goods and services within a reasonable amount of time;
- (c) Seek consultation/referral if indicated;
- (d) Make accurate representation to the patient on services or denture functionality;
- (e) Provide or arrange for continuity of care or emergency treatment for a patient currently receiving treatment;
- (f) Employ current denture technology practices and materials;
- (g) Adhere to appropriate use of quality materials;
- (h) Adhere to Centers for Disease Control infection control standards and the Board's clinical requirements;
- (i) Provide a copy of the patient record in a reasonable amount of time for a reasonable amount of money as requested by the patient.

(6) Minimum Standards of Acceptability for Full Dentures: Licensees must adhere to the following practice standards in constructing full dentures that provide appropriate function. Acceptability is measured against the following criteria:

(a) The maxillary denture covers the entire hard palate, with a postdam that extends from the hamular notch to form a posterior seal on the soft palate;

(b) The mandibular denture has full posterior flanges, extending near the floor of the mouth and extending distally to include a portion of the retromolar pad;

(c) The denture base material adapts to the soft tissues and the extension achieves stability;

(d) Tooth position, size, and shade appear natural;

(e) Contour and shade of the denture base material appear natural;

(f) Centric relation, if not correct, is correctable;

(g) Vertical dimension is within the physiologic tolerance of the patient;

(h) No occlusal interferences are present in lateral and protrusive excursions;

(i) Occlusal surfaces have anatomic or nonanatomic detail, and masticatory forces are evenly distributed;

(j) Occlusal disharmony is not present; and

(k) There may not be movement of the denture when biting pressure is applied in anterior and posterior segments of the arch except when it is not reasonably possible to achieve the desired result.

(7) Any deviation from the standards outlined in subsection (6)(a) through (k) of this rule, must be based on the patient's individual physiology, in the best interest of the patient, and in conformance with generally accepted standards of patient care. On such occasion, the dentist must document the reasons for the deviation in the patient record. Failure to document the reasons for deviation from stated standards creates a presumption that the deviation was not in the best interest of the patient.

(8) Violation of Standards. Violation of any practice standard in OAR 331-420-0000 shall constitute grounds for discipline.

Stat. Auth.: ORS 676.605, 676.615, 680.550, 680.565

Stats. Implemented: ORS 676.605, 676.615, 680.550, 680.565

Hist.: HD 4-1988, f. & cert. ef. 3-4-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 13-1991(Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; Subsections (9)(a) through (h) renumbered to 333-020-090 and 333-020-100; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0085; HLO 1-2003, f. 1-21-03, cert. ef. 2-1-03; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-420-0020

Clinical Requirements

The Board will consider current Centers for Disease Control guidelines when determining acceptable patient care and requirements for the clinical practice of denture technology. Additionally, denturists must comply with the following standards:

(1) Instruments, implements, supplies and impression trays used in intra-oral procedures that come in contact with body fluids shall be sterilized prior to each use.

(2) Instruments or other equipment which are "heat-sensitive" shall be disinfected by complete immersion of the object(s) or portion(s) thereof to be disinfected, in an FDA approved chemical sterilant, and used according to the manufacturer's instructions.

(3) Mechanical sterilizing devices shall be tested for functionality on a quarterly basis by means of a biological monitoring system that indicates the destruction of micro-organisms, and chemical indicators (color change) to assure sufficient temperature and correct functioning of equipment during each sterilization cycle.

(4) Chemical and biological test results shall be available at the business premises at all times for inspection by the Health Licensing Office enforcement officers. Biological test results must be on laboratory letterhead and must contain the test date, and the name, model and serial num-

ber of the unit tested. Biological test results shall be retained for a two year period.

(5) Environmental surfaces that are contaminated by blood or saliva shall be disinfected with a high-level disinfectant, which is tuberculocidal and labeled accordingly, or bleach solution, used according to manufacturer's instructions.

(6) Disposable gloves shall be worn whenever placing fingers into the mouth of a patient or when handling blood or saliva contaminated instruments or equipment. Hands shall be washed and re-gloved before performing procedures on another patient.

(7) All contaminated wastes and sharps shall be disposed of according to governmental requirements, specifically ORS 459.386 through 459.405 and OAR 333-056-0020. "Sharps" means any object that can penetrate the skin, including but not limited to needles, scalpel blades, lancets, glass tubes, or other instruments that could be broken during handling, and syringes that have been removed from their original sterile containers.

(8) All procedures performed shall be in such a manner as to avoid cross contamination of blood borne pathogens.

Stat. Auth.: ORS 676.605, 676.615, 680.550, 680.565

Stats. Implemented: ORS 676.605, 676.615, 680.550, 680.565

Hist.: HD 3-1992, f. & cert. ef. 3-25-92; Renumbered from 333-020-085(9)(a) through (h); HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0100; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 1-2003, f. 1-21-03, cert. ef. 2-1-03; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-425-0010

Procedure for Filing a Complaint

The Health Licensing Office may initiate and conduct investigations of matters relating to the practice of denture technology, pursuant to ORS 676.608, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and 680.535.

Stat. Auth.: ORS 676.608, 676.615, 676.992, 680.535, 680.565

Stats. Implemented: ORS 676.608, 676.615, 676.992, 680.535, 680.565

Hist.: HD 1-1983, f. & ef. 1-20-83; HD 4-1989, f. & cert. ef. 6-1-89; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0070; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

331-430-0030

Establishing Civil Penalty Amounts

The Health Licensing Office has adopted the following presumptive penalty schedule for the first and second violations of the following laws and rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For subsequent violations the provisions of OAR 331-020-0060 will apply.

(1) Practicing or holding one's self out as available to practice denture technology, or using the title dentist without a license or with an expired or suspended license is a violation of ORS 680.505 and may incur a penalty of \$5,000.

(2) Licensed denturists who allow non-licensed persons to perform clinical procedures is a violation of ORS 680.505 and may incur a penalty of \$5,000.

(3) Failing to post a current, valid dentist license in public view is a violation of OAR 331-410-0090 and may incur a penalty of \$150.

(4) Performing or offering to perform denture technology services involving intra-oral work, without obtaining a valid Oral Health Certificate prior to services being rendered, or without having qualified for and obtained an oral pathology endorsement is a violation of ORS 680.545, and may incur a penalty of \$2,000.

(5) Failing to notify the agency within 30 days of a change in business related information or license status, is a violation of OAR 331-010-0040, and may incur a penalty of \$200.

(6) Advertising in a manner, which would deceive or mislead the public or that is untruthful is a violation of ORS 676.612(1)(b), and may incur a penalty of \$2,000.

(7) Failing to meet practice standards, involving health history, clinical examination, record of clinical treatment, or retention of records is a violation of ORS 680.550 and OAR 331-420-0000, and may incur a penalty of \$1,000.

(8) Failing to meet minimum standards of acceptability for full dentures according to OAR 331-420-0000(6), or to meet standards for partial dentures as determined by the board may incur a penalty of \$5,000.

(9) Failing to maintain clean floors, walls and ceilings in the clinical area of the premises is a violation of OAR 331-420-0010(1), and may incur a penalty of \$1,000.

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(10) Failing to disinfect surfaces or blood spills by using an Environmental Protection Agency registered disinfectant is a violation of OAR 331-420-0020(5), and may incur a penalty of \$1,000.

(11) Failing to sterilize all instruments, impression trays, and supplies for intraoral use prior to each use on patients is a violation of OAR 331-420-0020(1), and may incur a penalty of \$1,000.

(12) Failing to test all sterilizing devices on a quarterly basis is a violation of OAR 331-420-0020(3), and may incur a penalty of \$1,000.

(13) Failing to have both biological and chemical test results available at the facility for inspection by the agency enforcement officers is a violation of OAR 331-420-0020(4), and may incur a penalty of \$1,000.

(14) Failing to keep Environmental Protection Agency registered disinfecting solution at adequate strength and free of foreign material to maintain effectiveness is a violation of OAR 331-420-0020(5), and may incur a penalty of \$1,000.

(15) Failing to wash hands with a germicidal or antiseptic soap and water before and after every patient when clinical contact occurs or failing to use disposable gloves whenever placing fingers into a patient's mouth or when handling blood or saliva contaminated instruments or equipment is a violation of OAR 331-420-0020(6), and may incur a penalty of \$1,000.

(16) Failing to perform procedures in such a manner as to avoid cross contamination of blood borne pathogens is a violation of OAR 331-420-0020(8), and may incur a penalty of \$500.

(17) Failing to dispose contaminated wastes and/or sharps in accordance with provisions of ORS 459.386 through 459.405 and OAR 333-056-0020 is a violation of OAR 331-420-0020(7) and may incur a penalty of \$1,000.

(18) Allowing pets or other animals on the premises of the business facility other than trained guide animals or fish in an aquarium, is a violation of OAR 331-420-0010(4), and may incur a penalty of \$500.

Stat. Auth.: ORS 680.565 & 680.572

Stats. Implemented: ORS 680.565 & 680.572

Hist.: HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98. Renumbered from 333-020-0120; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04

Adm. Order No.: HLO 3-2004

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

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

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

331-105-0020

Definitions

The following definitions apply to OAR 331-105-0000 through 331-125-0020.

(1) "Agency" means the Health Licensing Office. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(2) "Accredited" means fully accredited and approved to offer degrees at the specified level by an agency or association recognized as an accreditor by the U.S. Secretary of Education, under the 1965 Higher

Education Act as amended at the time of recognition, or having candidacy status with such an accrediting agency or association whose pre-accreditation is also recognized specifically for HEA purposes by the Secretary of Education, or the foreign equivalency of such accreditation as determined in consultation with the Office of Degree Authorization.

(3) "Board" means, pursuant to Oregon Laws 1999, Chapter 736, Section 2, the entity that advises the agency in matters relating to the practice of athletic training, including practice standards, education and training requirements, and advises the agency on all disciplinary issues in accordance with Oregon Laws 1999, Chapter 736, Section 4. The agency director controls the regulatory operations and has decision-making authority on all substantive matters.

(4) "Athletic Trainer" means a person who is registered by the Board of Athletic Trainers to practice athletic training as defined in Oregon Laws 1999, Chapter 736, Section 1, subsection (4).

(5) "Date of registration" means the date upon which the applicant has met all requirements for registration and is issued a valid current registration document.

(6) "Director" means the individual who is responsible for the performance of the agency as defined in ORS 676.610. The director appoints all subordinate officers and employees to carry out the duties of the agency.

(7) "Equivalent" means substantially comparable but not identical, covering the same subject matter or requirement.

(8) "Expired registration" means a registration that is not renewed prior to the expiration date and lapses into inactive status.

(9) "Health Licensing Office" means the agency.

(10) "NATA" means the National Athletic Trainers' Association.

(11) "NATABOC" means the National Athletic Trainers' Association Board of Certification.

(12) "Registration" means the document issued by the agency authorizing the holder to practice athletic training and use the title "Athletic Trainer, Registered."

Stat. Auth.: OL 1999, Ch. 736, Sec. 5

Stats. Implemented: OL 1999, Ch. 736, Sec. 5

Hist.: HD 8-1994, f. & cert. ef. 3-15-94; HDLB 2-1996, f. 12-13-96, cert. ef. 2-1-97; Renumbered from 333-315-010; HDLP 1-2000(Temp), f. 2-14-00, cert. ef. 2-15-00 thru 8-11-00; HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-105-0030

Fees

(1) Applicants and registrants are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Health Licensing Office are as follows:

(a) Application: \$100;

(b) Original registration: \$275 for one-year renewal cycle;

(c) Renewal of Registration: \$275;

(d) Permits and waivers: \$150;

(e) Reinstatement: \$150;

(f) Delinquency or late renewal of registration: \$50;

(g) Replacement of registration including name change: \$25;

(h) Reciprocity: \$325;

Stat. Auth.: OL 1999, Ch. 736, Sec. 5(3) & (4) & Sec. 10

Stats. Implemented: OL 1999, Ch. 736, Sec. 5(3) & (4) & Sec. 10

Hist.: HDLB 2-1996, f. 12-13-96, cert. ef. 1-1-97; HDLP 1-2000(Temp), f. 2-14-00, cert. ef. 2-15-00 thru 8-11-00; Administrative correction 3-16-00; HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-110-0005

Training/Education Requirements

At the time of application for Oregon registration, an applicant is required to provide adequate documentation of a bachelor's degree from an accredited four-year college or university pursuant to 1999 Oregon Laws, Chapter 736, Section 8(1) and satisfactory completion of one of the following training/education qualification pathways:

(1) Official documentation of a passing score of the National Athletic Trainers' Association Board of Certification (NATABOC) or documentation of successful completion of an equivalent examination approved or recognized by the Board. The applicant must provide official documentation verifying current certification by the National Athletic Trainers' Association Board of Certification (NATABOC) at the time of application for Oregon registration. The applicant assumes responsibility for payment of fees assessed by NATABOC in obtaining required official documentation; or

(2) Official documentation verifying completion of course work, education and practical work experience as follows:

ADMINISTRATIVE RULES

(a) Graduation from an entry-level Commission on Accreditation of Allied Health Education Programs (CAAHEP) curriculum in athletic training; or

(b) Successful completion of approved course work, by means of official transcripts submitted directly from the education institution by mail to the Health Licensing Office. At least one course must be completed in each of the following areas: health (i.e. nutrition, drugs/substance abuse, health education, personal health and wellness), human anatomy, kinesiology/bio-mechanics, human physiology, physiology of exercise, basic athletic training, and advanced athletic training or in related subject areas approved by the board. Completion of at least 1500 hours of practical work experience in athletic training under the supervision of a qualified athletic trainer or other qualified professional approved by the Board. Practical work experience must meet the following requirements and criteria:

(A) Experience must be gained over a period of the previous two calendar years;

(B) At least 1000 hours must be attained in a traditional athletic training setting at the interscholastic, intercollegiate, or professional sports level.

(C) The remaining balance of practical hours, not to exceed 500 hours, may be attained from an allied clinical setting and/or sports camp setting under the supervision of a qualified athletic trainer or other qualified professional as approved by the Board.

(D) At least twenty-five percent of the hours obtained must be in actual on-location practice and/or game coverage with one or more of the following sports: football, soccer, hockey, wrestling, basketball, gymnastics, lacrosse, volleyball, rugby, rodeo or other high risk sport approved by the Board.

(3) Applicants who hold a current athletic training licensing credential issued from another state, territory, or country must arrange for a completed Affidavit of Registration, issued from the credentialing state, to be mailed directly to the Health Licensing office. The Affidavit must attest to the applicant's registration record and indicate successful completion of an examination by an entity recognized or sanctioned by the Board.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(2), (3) & (6) & Sec. 8
Stats. Implemented: OL 1999, Ch. 736, Sec. 4(2), (3) & (6) & Sec. 8
Hist.: HDLP 1-2000(Temp), f. 2-14-00, cert. ef. 2-15-00 thru 8-11-00; HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HDLP 4-2000, f. 11-17-00, cert. ef. 11-20-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-110-0010

Application Requirements

(1) Individuals applying for registration to practice athletic training must meet the requirements of OAR 331-030-0000 in addition to the provisions of this rule.

(2) Applicants must be at least 18 years of age and provide a copy of their birth certificate, driver's license, passport, or school/military/governmental record with age documented.

(3) Applicants must submit a completed application form prescribed by the agency, which shall contain the information listed in OAR 331-030-0000(5) and be accompanied by payment of the application and registration fees and include the following:

(a) Disclosure of all information pertaining to degree from a four year accredited college or university;

(b) Information pertaining to satisfactory completion of competency examination, including examination type, source, date, location and score(s); and

(c) A copy of a cardio-pulmonary resuscitation certification (CPR). The CPR course must include adult CPR techniques from a source approved by the Board. A valid emergency medical technician certification is an acceptable alternative for satisfying the CPR requirement; and

(d) Documentation verifying completion of required training/education according to the provisions of OAR 331-110-0005.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(3) & (6) & Sec. 8
Stats. Implemented: OL 1999, Ch. 736, Sec. 4(3) & (6) & Sec. 8
Hist.: HD 8-1994, f. & cert. ef. 3-15-94; HDLB 2-1996, f. 12-13-96, cert. ef. 1-1-97; Renumbered from 333-315-0020; HDLP 1-2000(Temp), f. 2-14-00, cert. ef. 2-15-00 thru 8-11-00; HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-110-0055

Registration Required; Exception

(1) To practice athletic training in the state of Oregon, individuals must be registered in accordance with Oregon Laws 1999, Chapter 736, Section (6).

(2) Athletic trainers or other designated persons from another state, or territory, who are performing services for their respective team or for a sponsoring organization and only during the course of that team's stay or the duration of a sponsored event in this state, are not required to hold an

Oregon registration or to apply for a waiver if the time in Oregon is less than 60 days in one calendar year.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(3) & Sec. 6(2)(e)
Stats. Implemented: OL 1999, Ch. 736, Sec. 4(3) & Sec. 6(2)(e)
Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-115-0020

Registration Issuance

(1) Registrants are subject to the provisions of OAR 331-030-0010 regarding issuance and renewal of a registration, and to the provisions of OAR 331-030-0020 regarding authorization to practice, identification and requirements for issuance of a duplicate authorization document.

(2) Registration must be documented under the applicant's legal name. When a name is changed, the following items must be submitted so the agency's records reflect the new name:

(a) A signed change of name notification;

(b) A copy of the legal document showing the name change;

(c) Return of the registration form issued and payment of replacement fee if a corrected registration is requested prior to the scheduled renewal date.

Stat. Auth.: Ch. 736, OL 1999
Stats. Implemented: Ch. 736, OL 1999
Hist.: HD 8-1994, f. & cert. ef. 3-15-94; HDLB 2-1996, f. 12-13-96, cert. ef. 1-1-97; Renumbered from 333-315-0030; HDLP 1-2000(Temp), f. 2-14-00, cert. ef. 2-15-00 thru 8-11-00; HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00, Renumbered from 331-110-0020; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-115-0030

Registration Renewal; Reinstatement

(1) A registration renewal application received by the agency, or post-marked, after the registration has expired but within one year from the expiration date, may be renewed upon payment of the renewal and delinquency fees and submitting the required attestation of having obtained the required number of continuing education credits. Refer to OAR 331-125-0010.

(2) A registration which has been expired for more than one year but less than two may be reinstated if the applicant completes the following requirements:

(a) Submits verification of a valid cardiopulmonary resuscitation certification;

(b) Pays registration renewal and reinstatement fees; and

(c) Provides documentation of continuing education during the period while the registration was in expired, suspended or probationary status.

(3) Registrations that have been expired beyond two years are not renewable. An individual may apply for a new registration by meeting the requirements of OAR 331-110-0010.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(3), Sec. 5(2) & Sec. 9
Stats. Implemented: OL 1999, Ch. 736, Sec. 4(3), Sec. 5(2) & Sec. 9
Hist.: HD 8-1994, f. & cert. ef. 3-15-94; HDLB 2-1996, f. 12-13-96, cert. ef. 1-1-97; Renumbered from 333-315-0030; HDLP 1-2000(Temp), f. 2-14-00, cert. ef. 2-15-00 thru 8-11-00; HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00, Renumbered from 331-110-0020; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-115-0060

Registration Display and Posting Requirements

(1) Registrants must show proof of valid registration with the Board upon request or post the registration document in public view at the athletic trainer's primary workplace.

(2) The registrant's address printed on the registration document may be concealed from public view.

(3) Registrants must carry the registration identification card (pocket card) with them, or post in plain view, the official registration anytime services are being provided.

Stat. Auth.: OL 1999, Ch. 736, Sec. 5(1) & (2)
Stats. Implemented: OL 1999, Ch. 736, Sec. 5(1) & (2)
Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-120-0000

Profession Statement

(1) The purpose of the Oregon Board of Athletic Trainers is to protect the health, safety, and welfare of Oregon's citizens by granting or withholding the privilege of practicing athletic training in accordance with strict standards for education and conduct; to regulate the use of that privilege in such a way that the public is protected from the practice of athletic training by unauthorized or unqualified persons from unprofessional conduct by Board registrants; and to build and encourage athletic training excellence in Oregon.

(2) In addition to its licensing function, the Health Licensing Office conducts investigations, imposes disciplinary actions, and in collaboration with the Board supports rehabilitation education and initiatives, which further the Board's legislative mandate to protect the citizens of Oregon.

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Stat. Auth.: OL 1999, Ch. 736, Sec. 4(5)
Stats. Implemented: OL 1999, Ch. 736, Sec. 4(5)
Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-120-0020

Standards of Practice

Athletic trainers shall adhere to the following standards of professional conduct.

(1) **Physician Collaboration:** Athletic trainers are required to collaborate with a physician in the treatment of an athletic injury as provided in OAR 331-120-0030.

(2) **Registered Athletic Trainers** shall be responsible for the conduct and performance of student assistants under their supervision.

(3) **Documentation:** Athletic trainers are required to accept responsibility for recording details of the athlete's health status and include details of the injured athlete's medical history, including name, address and legal guardian if a minor, referral source, all assessments, test results, database by date of service provided, treatment plan and estimated length for recovery, record all methods used, results achieved, any changes in the treatment plan, record the date that the treatment plan is concluded and provide a summary, sign and date each entry.

(4) **Confidentiality:** Athletic trainers are required to maintain confidentiality and in a timely manner communicate assessment results, treatment program plans, or periodic progress reports with any other person involved in the injured athlete's treatment.

(5) **Initial Assessment:** Prior to treatment, athletic trainers are required to assess the athlete's history and level of functioning.

(6) **Treatment Program Planning:** The treatment program objectives must include goals, expectations and measures to determine the effectiveness of the program.

(7) Athletic trainers are required to observe the Standard Precautions adopted by the Centers for Disease Control as defined in Oregon Administrative Rules 437 Division 2, when providing services to clients.

(8) Working under the influence of alcohol or any drugs, including prescription medications, which may impair performance, is prohibited. Athletic trainers are required to seek professional assistance through a diversion program if necessary to achieve and maintain freedom from substance abuse.

(9) Sexual misconduct in the practice of athletic training is prohibited.

(10) Practicing athletic training or offering to perform services beyond the scope of practice permitted by law and defined in Oregon Laws 1999, Chapter 736, Section 1, subsection (4), is prohibited.

(11) Performing services which have not been authorized by the consumer or his / her legal representative is prohibited.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(5)
Stats. Implemented: OL 1999, Ch. 736, Sec. 4(5)
Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HDLP 4-2000, f. 11-17-00, cert. ef. 11-21-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-120-0030

Collaboration Between Athletic Trainers and Physicians

(1) "Collaboration" as used in this section means consultation, correspondence, or referral between an athletic trainer and a physician. Collaboration may be initiated by the athletic trainer or physician, and consists of oral or written communication between the parties or an appropriate representative of the physician. "Collaboration" as used in OAR 331-120-0020 and this section, does not mean providing care on behalf of, jointly, or in concert with one another.

(2) "Consultation" as used in this section means discussing and/or sharing information with another health care provider that is consistent with the requirements of state and federal law regarding confidentiality for the purposes of obtaining information or recommendations for the provision of care to the athlete.

(3) "Referral" as used in this section means directing the athlete to other resources for purposes of care, treatment, assessment or intervention.

(4) An athletic trainer must consult with or refer an athlete to a physician when the athletic injury is beyond the athletic trainer's scope of practice or expertise, or in those instances where the injury is not responding to treatment. Specific conditions requiring referral to a physician should include:

- (a) Any suspected fracture
- (b) Limb malalignment
- (c) Joint instability
- (d) Bone deformity
- (e) A concussion with symptoms lasting more than 15 minutes or any loss of consciousness

(f) Injury that is not improving within expected amount of time

(g) Any life threatening injury

(h) Any suspected damage to internal organs

(i) Any unresolving or recurrent neurological injury.

(5) The athletic trainer must appropriately record collaboration with a physician regarding an athlete or athletic injury in an acceptable manner, such as notation on injury reports, medical records, and/or progress reports.

(6) Nothing in this section or these rules shall be construed to prevent a physician from employing, directing, supervising, establishing protocols for, or otherwise assisting a registered athletic trainer in the practice of athletic training consistent with the scope of practice and professional standards of each practitioner.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(10)
Stats. Implemented: OL 1999, Ch. 736, Sec. 4(10)
Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HDLP 4-2000, f. 11-17-00, cert. ef. 11-20-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-125-0000

Continued Competency

(1) To ensure continuing efforts on the part of Oregon registered athletic trainers to remain current with new developments in athletic training and to encourage diversified training and qualifications in the profession continuing education is required as a condition of registration.

(2) Continuing education experiences are programs beyond the basic education required to obtain registration which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of the practices of registered athletic trainers, thus improving athletic training care to the public.

(3) Continuing education requirements apply whether the applicant renewing registration is living or working within Oregon or outside of the state, so long as Oregon registration is maintained.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(8)
Stats. Implemented: OL 1999, Ch. 736, Sec. 4(8)
Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-125-0010

Continuing Education Requirements

(1) Registrants must complete 80 clock hours of continuing education coinciding with NATABOC's three year reporting period. The three-year period is independent of the date of first registration. Reporting periods begin January 1 and end December 31 in three-year increments.

(2) Required continuing education will be pro-rated according to the date initial Oregon registration occurs within NATABOC's continuing education three-year reporting period. Requirements are as follows:

(a) Registrations issued during the first year of a three-year reporting period require completion of 55 clock hours of continuing education within the reporting period.

(b) Registrations issued during the second year of a the three-year reporting period require completion of 25 clock hours of continuing education within the reporting period.

(c) Registrations issued during the third year of the three-year reporting period do not require completion of any clock hours of continuing education to be eligible for a first renewal of a registration.

(3) Continuing education obtained by a registrant will be approved if the content or experience falls within at the scope of practice for athletic training identified in OAR 331-120-0010.

(4) The Board recognizes, as its approved criteria in determining qualification for registration renewal, NATABOC's 1999 adopted continuing education requirements and current guidelines, including pre-approved courses and providers, continuing education categories A through E, contact hour requirements and limitations for awarding credit based on category type and source. Continuing education must be obtained from the following sources: Symposiums, seminars, workshops, conference; speaker or panelist at allied health care professional setting; author, co-author, contributing author, or editor of publication, such as journal, article or textbook; approved home study, such as video, audio tapes, software program or on-line course; post certification education at college or university; and cardiopulmonary resuscitation. A copy of NATABOC's 1999 adopted continuing education requirements is available for review at the agency and on-line at NATABOC's Web page.

(5) Continuing education acquired from sources identified in NATABOC's Category E adopted in 1999 will be reviewed on a case-by-case basis to determine Board approval. Education must be pertinent to the scope of practice for athletic training listed in OAR 331-120-0010. Documentation for approval of continuing education must address the following criteria:

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(a) Relevance of the subject matter to increase or support the development of skill and competence in athletic training;

(b) Objectives of specific information or skill to be learned;

(c) Subject matter, educational methods, materials, and facilities utilized, including the frequency and duration of sessions and the adequacy to implement learner objectives; and

(d) Sponsorship and leadership of programs, including the name of the sponsoring individual(s) or organization(s), and program leaders or faculty if different from sponsors and contact person.

(6) Credit for completion of continuing education will be limited according to course work type, source and categories identified by NATABOC and adopted in 1999 as follows:

(a) Contact hours required of registrants initially registered during the first year of a three-year reporting period: Category A - 75, Category B - 52, Category C - 75, Category D - a minimum of 5 and maximum of 15 contact hours, Category E - 20;

(b) Contact hours required of registrants initially registered during the second year of a three-year reporting period: Category A - 50, Category B - 36, Category C - 50, Category D - a minimum of 5 and maximum of 15 contact hours, and Category E - 13;

(c) Contact hours required of registrants initially registered during the third year of a three-year reporting period: Category A - 20, Category B - 16, Category C - 20, Category D - a minimum of 5 and maximum of 15 contact hours, and Category E - 6.

(7) Continuing education credit will not be awarded to registrants for the following activities:

(a) Education incidental to the regular professional activities of a registrant, such as learning occurring from experience or research;

(b) Professional organization activity, such as serving on committees or councils or as an officer;

(c) Activities, with the exception of CPR, which have been completed more than once during the continuing education period; or

(d) Performance of duties that are routine job duties or requirements.

(8) Continuing education hours earned in excess of those required for the reporting period may not be carried forward for credit toward meeting future requirements.

(9) Documentation of continuing education hours earned must be furnished to the Board only when selected for audit.

(10) At the time of application for renewal, registrants must submit the completed renewal form, affix their signature attesting to completion of required continuing education, and pay appropriate fees.

(11) Documentation supporting compliance with continuing education requirements must be maintained for a period of two years following the last day of any reporting period and be available to the agency upon request.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(8)

Stats. Implemented: OL 1999, Ch. 736, Sec. 4(8)

Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HDLP 4-2000, f. 11-17-00, cert. ef. 11-20-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-125-0020

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Health Licensing Office will audit a select percentage of licensee records determined by the Board to verify compliance with continuing education requirements. Audit will commence within six months after the end of a NATABOC reporting period.

(2) Licensees notified of selection for audit of continuing education shall submit to the agency, within 30 calendar days from the date of notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-125-0010.

(3) Documentation of attendance at a program or course provided must include either a copy of the current valid NATABOC certification or all of the following:

(a) Name of sponsoring institution/association or organization;

(b) Title of presentation and description of content;

(c) Name of instructor or presenter;

(d) Date of attendance and duration in hours;

(e) Course agenda;

(f) Official transcript, diploma, certificate, statement or affidavit from the sponsor, attesting to attendance.

(4) If documentation of continuing education is invalid or incomplete, the practitioner must correct the deficiency within 30 calendar days from the date of notice. Failure to correct the deficiency within the prescribed time shall constitute grounds for disciplinary action.

(5) Misrepresentation of continuing education or failing to meet continuing education requirements or documentation may result in disciplinary

action, which may include but is not limited to, assessment of a civil penalty and suspension or revocation of the registration.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(8)

Stats. Implemented: OL 1999, Ch. 736, Sec. 4(8)

Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

331-135-0000

Investigative Authority

The Health Licensing Office may initiate and conduct investigations of matters relating to the practice of athletic training, pursuant to ORS 676.608, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and Oregon Laws 1999, Chapter 736, Section 11.

Stat. Auth.: OL 1999, Ch. 736, Sec. 5(8), 6(1) & 11

Stats. Implemented: OL 1999, Ch. 736, Sec. 5(8), 6(1) & 11

Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04

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Rules Repealed: 331-700-0000, 331-700-0010, 331-705-0000, 331-705-0010, 331-705-0020, 331-705-0030, 331-705-0040, 331-715-0020, 331-715-0040, 331-715-0050, 331-725-0000, 331-725-0010, 331-730-0000, 331-730-0010, 331-730-0020, 331-730-0030, 331-730-0040

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

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

331-705-0050

Definitions

The following definitions apply to OAR 331-705-0000 through 331-720-0020:

(1) "Active license" means a license issued when all requirements are met, fees paid and license is not expired, suspended or revoked.

(2) "Affidavit of Licensure" means an original document verifying licensing history and status, issued and signed by the licensing authority in the state which issued the license with an official seal or stamp affixed to the document; it is not the certificate or license form issued which authorizes the holder to practice.

(3) "Agency" means the Health Licensing Office. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(4) "Board" means, pursuant to ORS 688.820, the entity that advises the agency on matters relating to the practice of respiratory care, and determines practice standards, education and training and provides consultation to the agency on all disciplinary issues in accordance with ORS 688.830.

(5) "Contact hours" means academic classroom or course work hours including but not limited to workshops, symposiums, seminars, or laboratory exercises. Contact time does not include personal travel time to or from the training site, registration or check-in periods, breaks or lunchtime granted during attendance at any continuing education seminar or course.

(6) "CRT" applies to a person who has satisfactorily completed the Certified Respiratory Therapist examination issued by the National Board for Respiratory Care (NBRC).

(7) "Director" means the individual who is responsible for the performance of the agency as defined in ORS 676.610. The director appoints all subordinate officers and employees to carry out the duties of the agency.

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(8) "Expired" means a license which has not been renewed.

(9) "Health Licensing Office" means the agency.

(10) "Inactive license" means a license which has been expired less than two years from the expiration date; requires certificate of continuing education and payment of fees for reinstatement.

(11) "Lapsed license" means a license, which has been expired more than two years from the expiration date; requires proof of continuing education, or satisfactory retake of entry-level examination by National Board for Respiratory Care (NBRC) and payment of fees for reinstatement.

(12) "NBRC" means the National Board for Respiratory Care, which provides credentialing and examination services for the respiratory care profession.

(13) "Official transcript" means an original document certified by the school indicating hours and types of course work, examinations and scores that the student has completed, which has been submitted through mail by the school or by courier from the school to the agency in a sealed envelope.

(14) "Practitioner" means any person whom the Board has licensed to practice respiratory care.

(15) "RRT" applies to a person who has satisfactorily completed the Registered Respiratory Therapist examination issued by the National Board for Respiratory Care (NBRC).

(16) "Standard precautions" means a set of guidelines and controls, published by the Centers for Disease Control (CDC), which outline certain practices which health workers must employ in order to prevent parenteral, mucous-membrane, and no intact skin exposure to blood-borne pathogens. The method of infection control requires the employer and employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV, and other blood borne pathogens. Precautions include hand washing, gloving, personal protective equipment, injury prevention, proper handling and disposal of needles and other sharp instruments and blood and body fluid contaminated products.

(17) "Supervision" requires the presence of a licensed Respiratory Care Practitioner or qualified Medical Director within the work location at the same time as the applicant working under a "temporary license".

(18) "Temporary License" is a license issued for a period of six months, which is not renewable, authorizing an applicant for licensure to practice respiratory therapy under supervision pending passage of the qualifying examination.

Stat. Auth.: ORS 676.605, 676.615, 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04

331-705-0060

Fees

(1) Applicants and licensees are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Health Licensing Office are as follows:

(a) Application: \$50;

(b) Original license: \$75 for one-year initial cycle;

(c) Renewal of license: \$75 for one-year renewal cycle;

(d) Temporary license (six month, non-renewable): \$50;

(e) Delinquency or late renewal of license: \$50;

(f) Restoration of license: \$100;

(g) Replacement of license including name change: \$25;

(h) Duplicate license: \$25;

Stat. Auth.: ORS 688.830(9)

Stats. Implemented: ORS 688.830(9)

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 1-1998(Temp), f. & cert. ef. 3-20-98 thru 4-1-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HDLP 2-2002, f. 12-20-02 cert. ef. 1-1-03; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04

331-710-0000

Training

Training, or formal education, required for licensure is a planned sequence of instruction of specific content, pursuant to ORS 688.815(1)(c), structured to meet stated curriculum objectives which includes evaluation of attainment of those objectives, and offered by a post-secondary educational institution accredited by the *Committee On Accreditation For Respiratory Care*, or its successors, or recognized by the *National Board for Respiratory Care*.

Stat. Auth.: ORS 676.605, 676.615, 688.815, 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.815, 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04

331-710-0010

Application Requirements

(1) Individuals applying for licensure to practice respiratory care must meet the requirements of OAR 331-030-0000 in addition to the provisions of this rule.

(2) Applicants must submit an application form prescribed by the Agency, which shall contain the information listed in OAR 331-030-0000, payment of the application and license fees, and official documentation of a passing score of the Certified Respiratory Therapist, (CRT) examination or Registered Respiratory Therapist (RRT) examination mailed by the National Board for Respiratory Care to the agency. Copies of examination results or other documentation provided by the applicant are not acceptable. The applicant is responsible for payment of fees assessed by NBRC in obtaining required official documentation.

Stat. Auth.: ORS 676.605, 676.615, 688.815, 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.815, 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04

331-710-0020

Application for Temporary Licensure ; Expiration; Changes in Employment Status

(1) Application for temporary licensure may be made by persons who have completed training and wish to begin supervised practice pending passage of the qualifying examination.

(2) Individuals applying for temporary licensure must meet the requirements of OAR 331-030-0000 in addition to the provisions of this rule.

(3) Applicants must submit an application form prescribed by the agency, which shall contain the information listed in OAR 331-030-0000(5) and be accompanied by payment of the application and temporary license fees. The completed application must include official transcripts from a college or university in respiratory care. A notarized Certificate of Completion issued by the college or university may be submitted to the agency following completion of schooling until the official transcript is available to facilitate temporary licensure. The official transcript must be received by the agency to complete the application requirements.

(4) The temporary applicant shall submit the following items within 30 days of application, or, if application precedes employment, within 30 days of hire:

(a) Employer's name, address and telephone number; and

(b) Name and credentials of supervisor.

(5) A temporary license shall be issued when all requirements have been met, and shall expire the last day of the month six months from the date of issuance. Temporary licenses are not renewable.

(6) Temporary licensees shall notify the agency within 30 calendar days of changes in employment status.

Stat. Auth.: ORS 676.605, 676.615, 688.815, 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.815, 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04

331-710-0030

Examination

(1) The Board has selected the CRT or RRT examination administered by the National Board for Respiratory Care (NBRC) as its minimal qualifying examination for licensure. Individual applicants are responsible for payment of all NBRC application, examination, national certification or other fees directly to NBRC.

(2) Applicants who meet the educational requirements and achieve a passing score on the examination must request that certification of the passing score be sent from the National Board for Respiratory Care to the agency as a prerequisite to application.

Stat. Auth.: ORS 676.605, 676.615, 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04

331-715-0000

Licensure

(1) Pursuant to ORS 688.805(1) a person shall not practice respiratory care or claim to be a respiratory care practitioner, including that a person shall not display a sign or in any way advertise or purport to be a license holder or to be engaged in the practice of respiratory care without first obtaining a license under ORS 688.815.

(2) Licensees are subject to the provisions of OAR 331-030-0010 regarding the issuance and renewal of a license, and to the provisions of

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OAR 331-030-0020 regarding the authorization to practice, identification, and requirements for issuance of a duplicate authorization.

(3) Every respiratory care practitioner licensed by the agency shall be licensed under the applicant's legal name and shall function as a respiratory care practitioner under that name.

(4) When a name is changed, the following must be submitted so that the agency's records may reflect the new name:

- (a) A signed change of name notification;
- (b) A copy of the legal document showing the name change;
- (c) Return of the license form issued and payment of replacement fee.

(5) Practitioners who work in more than one facility may carry the license identification card (pocket card) with them, or post in plain view, when working at more than one place of business.

(6) Licensees shall not render respiratory care without written authorization or standing orders from a supervising physician who has been approved by the Board of Medical Examiners in accordance with ORS 682.245.

Stat. Auth.: ORS 676.605, 676.615, 688.830
Stats. Implemented: ORS 676.605, 676.615, 688.830
Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 1-1998(Temp), f. & cert. ef. 3-20-98 thru 4-1-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HDLP 2-2001, f. & cert. ef. 5-1-01; HDLP 3-2001, f. 6-29-01, cert. ef. 7-1-01; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04

331-715-0010 License Renewal

(1) A license renewal application received by the agency or post-marked after a license has expired but within one year from the expiration date, may be approved upon payment of the renewal and delinquency fees and required verification of continuing education pursuant to OAR 331-720-0010.

(2) A license which has been expired for more than one year, but less than two years may be renewed upon payment of the license renewal and restoration fees and submission of required continuing education documentation pursuant to OAR 331-720-0010.

(3) A license which has been expired two or more years may be reinstated by payment of application and renewal fees, and submission of continuing education documentation pursuant to OAR 331-720-0010 or proof of NBRC retake of entry level examination completed within one year prior to the date of reapplication.

(4) All license holders shall obtain 15 contact hours of continuing education training every two years as a condition of renewal, whether the license is active or inactive.

(5) Appropriate documentation required in OAR 331-720-0020 shall be accumulated and held by the license holder until submitted to the agency at the time of audit.

(6) Evidence of required continuing education shall be provided at the time of renewal by means of a prescribed self-attestation form certifying participation in approved continuing education.

Stat. Auth.: ORS 676.605, 676.615, 688.830
Stats. Implemented: ORS 676.605, 676.615, 688.830
Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 1-1998(Temp), f. & cert. ef. 3-20-98 thru 4-1-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04

331-715-0030 Professional Standards

(1) Respiratory care practitioners must comply with the prevailing community standards for professional conduct. The Board recognizes and adopts the American Association of Respiratory Care (AARC) Statement of Ethics and Professional Conduct effective December 1994 and Role Model Statement for Respiratory Care Practitioners effective March 1990 as its professional standards model. A copy of these documents are on file at the agency for review.

(2) At minimum, practitioners shall be subject to directives and policies established by the medical facilities, businesses or agencies by which they are employed or regulated.

(3) Respiratory care practitioners shall observe the Standard Precautions adopted by the Centers for Disease Control as defined in Oregon Administrative Rule 437 Division 2, Subdivision Z, and OAR 331-705-0050(16) when providing services to patients.

(4) Practitioners shall not work under the influence of alcohol or any drugs, including prescription medications, which may impair performance, and shall seek professional assistance through a diversion program if necessary to achieve and maintain freedom from substance abuse.

Stat. Auth.: ORS 676.605, 676.615, 688.830
Stats. Implemented: ORS 676.605, 676.615, 688.830
Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04

331-720-0000

Continued Competency

(1) To ensure continuing efforts on the part of Oregon licensed respiratory care practitioners to remain current with new developments in the respiratory therapy and health care field and to encourage diversified training and qualifications in the profession continuing education is required as a condition of licensure.

(2) Continuing Education requirements apply whether the renewal applicant is living or working within Oregon or outside of the state so long as Oregon licensure is maintained.

Stat. Auth.: ORS 676.605, 676.615, 688.830
Stats. Implemented: ORS 676.605, 676.615, 688.830
Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04

331-720-0010

Continuing Education Requirements

(1) Each respiratory care practitioner is required to complete 15 hours of Board approved continuing education every two years. At least two-thirds of the required continuing education hours shall be related to clinical practice of respiratory care.

(2) To renew the license, each licensee shall report compliance with the continuing education requirement through attestation on license renewal document.

(3) Continuing education is acceptable if provided by:

(a) A medical organization or association accredited by the Oregon Medical Association, the Oregon Osteopathic Association, the American Medical Association Continuing Medical Education, the American Osteopathic Association, the American Nurses Association, the American Association for Respiratory Care, and its affiliates, to provide continuing education to physicians, nurses, or respiratory care practitioners;

(b) A hospital not accredited to provide continuing education but the continuing education provided meets the following requirements:

(A) The content of the course or program shall be relevant to the scope of practice of respiratory care as defined in ORS 688.800(4);

(B) The faculty shall be knowledgeable in the subject matter as evidenced by a degree from an accredited college or university and verifiable experience in the subject matter or teaching and clinical experience in the same or similar subject matter;

(C) Educational objectives shall be listed;

(D) The teaching methods shall be described, e.g., lecture, seminar, audiovisual, simulation;

(E) Evaluation methods shall document that the objectives have been met.

(c) An institution of higher education accredited by the Northwest Association of Secondary and Higher Schools or its successor, or the State Board of Higher Education, providing the course(s) meet the requirements of paragraph (a) of this subsection. Five hours of continuing education credit per course, and up to two-thirds of the continuing education requirement, can be obtained by successfully completing the course(s) with a grade "C" or above, or a "pass" for a pass/fail course;

(d) A respiratory care educational program accredited by the American Medical Association Committee on Allied Health Education and Accreditation in collaboration with the Committee On Accreditation for Respiratory Care, or its successor, or the Commission on Accreditation for Allied Health Education Programs offering an Associate Degree in Respiratory Care;

(e) The NBRC through passing the examination for initial certification as an Registered Respiratory Therapist (RRT), or Perinatal/Pediatric Respiratory Care Specialist (PPRCS), or the NBRC through passing the re-credentialing examination for a Certified Respiratory Therapist (CRT), RRT, or PPRCS. Fifteen hours of continuing education can be obtained by passing these certification and re-credentialing examinations;

(f) The NBRC through passing the examination for initial certification as a Certified Pulmonary Function Technician (CPFT), or Registered Pulmonary function Technician (RFPT). Seven and one-half hours of continuing education can be obtained by passing these certification examinations;

(g) Publication in a peer reviewed journal as the author or co-author of a clinical paper or abstract. A total of five credit hours will be accepted per biennium for the publication of articles or abstracts in professional journals.

(4) To ensure adequate proof of continuing education course completion is available for audit or investigation by the Health Licensing Office, practitioners shall maintain a record of attendance for two years following renewal;

ADMINISTRATIVE RULES

(5) Respiratory care practitioners who instruct continuing education courses may obtain the same number of continuing education hours for each initial course taught during the biennium, in which the course is initially presented, as granted to course participants.

(6) Practitioners shall be awarded continuing education credit once for completion of the initial certification course for Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS) courses, and Neonatal Resuscitation Program (NRP). Up to four hours of continuing education credit may be obtained for each re-certification in ACLS, PALS, or NRP courses.

(7) Continuing education credit will not be granted for completion of the Basic Life Support (BLS) course.

Stat. Auth.: ORS 676.605, 676.615, 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04

331-720-0020

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Health Licensing Office will audit a select percentage of licenses determined by the Board to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation shall submit to the agency, within 30 calendar days from the date of issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-720-0010.

(3) Documentation of attendance at a program or course provided by the sponsor must include:

- (a) Name of sponsoring institution/association or organization;
- (b) Title of presentation and description of content;
- (c) Name of instructor or presenter;
- (d) Date of attendance and duration in hours;
- (e) Course agenda;

(f) Official transcript, diploma, statement or affidavit from the sponsor, attesting to attendance.

(4) If documentation of continuing education is invalid or incomplete, the licensee must correct the deficiency within 30 calendar days from the date of notice. Failure to correct the deficiency within the prescribed time shall constitute grounds for disciplinary action.

(5) Misrepresentation of continuing education, or failing to meet continuing education requirements or documentation, may result in disciplinary action, which may include, but is not limited to, assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth.: ORS 676.605, 676.615, 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04

331-725-0020

Investigatory Authority

The Health Licensing Office may initiate and conduct investigations of matters relating to the practice of respiratory care, pursuant to ORS 676.608, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and 688.836.

Stat. Auth.: ORS 676.605, 676.615, 688.830, 688.836

Stats. Implemented: ORS 676.605, 676.615, 688.830, 688.836

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04

Adm. Order No.: HLO 5-2004

Filed with Sec. of State: 6-29-2004

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Rules Amended: 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, 331-555-0010, 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, 331-570-0000, 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

Rules Repealed: 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

Rules Ren. & Amended: 331-555-0020 to 331-555-0010, 331-570-0010 to 331-570-0000, 331-530-0010 to 331-530-0000

Subject: Passage of HB 2325 by the 2003 Legislature completed the process of reorganizing oversight and centralizing service for 15 health and related professions, including the practice of electrology, 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, and revises specific rule titles for uniformity with all programs under the agency's administration.

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

331-505-0000

Definitions

The definitions of terms used in ORS 690.350 to 690.430 and 690.992 and the rules of OAR chapter 331, divisions 500 through 590, are:

(1) "Advisory Council" means, pursuant to ORS 690.425, the entity that advises the agency in matters relating to the practice of electrology, permanent coloring and tattooing in accordance with ORS 690.430. The agency director controls the regulatory operations and has decision-making authority on all substantive matters.

(2) "Agency" means the Health Licensing Office. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(3) "Antiseptic" means product used to stop or inhibit the growth of bacteria.

(4) "Clean" means the absence of soil and dirt by washing, sweeping, clearing away, or any other appropriate method rendering a sanitary condition.

(5) "Closed book" means without aid from or availability of written material.

(6) "Director" means the individual who is responsible for the performance of the agency under ORS 676.610. The director appoints all the subordinate officers and employees to carry out the duties of the agency.

(7) "Easily accessible" means unrestricted use or availability, easy to approach or enter.

(8) "Enclosed storage area" means separate room, closet, cupboard or cabinet.

(9) "Equivalent" means comparable but not identical, covering the same subject matter.

(10) "Facility" means an establishment in which a licensee(s) performs electrolysis, permanent coloring or tattooing, or any combination thereof.

(11) "Health Licensing Office" means agency.

(12) "High-level disinfectant" means a chemical agent, which has demonstrated tuberculocidal activity and is registered with the Environmental Protection Agency.

(13) "Incompetence" includes, but is not limited to, a demonstrated lack of ability or fitness to perform.

(14) "Linens" means cloths or towels used for such things as draping or protecting table.

(15) "Low-level disinfectant" means a chemical agent, which has demonstrated bactericidal, germicidal, fungicidal and limited virucidal activity and is registered with Environmental Protection Agency.

(16) "Official transcript" means an original document certified by a licensed or accredited school indicating hours and types of course work, examinations and scores that the student completed. The transcript must be

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mailed or delivered directly from the school to the agency by one of the following methods:

- (a) Regular USPS mail service;
- (b) Recognized mail service provider, such as UPS or FEDEX;
- (c) Authorized courier;
- (d) Electronic or facsimile transmission to specified agency email address and/or FAX number.

(17) "One year of work experience" means employment consisting of a 40-hour work week for a minimum of 50 consecutive weeks during a 12 month period or a cumulative total of 2,000 clock hours within a 24 month period.

(18) "Operatory" means isolated area where treatment or services are provided.

(19) "Part-time experience" means engaging in practice for a period of at least 24 weeks or 1,000 hours during a 12 month time period.

(20) "Photographic identification" means an official document issued by a recognized governmental agency or entity, including but not limited to a valid driver's license, passport, health identification card, or other document which contains personal information pertaining to the individual, a photograph and signature.

(21) "Place or places of business" means the physical location where services are performed or will be performed.

(22) "Premises" means the entire building or structure within which services are performed.

(23) "Probation" means continuation of licensure under conditions set by the agency.

(24) "Protective gloves" means gloves made of vinyl, latex or "Nitrile".

(25) "Public view" means open to view and easy for the public to see, located in the operatory/treatment area, or waiting/lobby area at the place of business.

(26) "Reactivate" means to change an expired license to an active license.

(27) "Reciprocity" means that an applicant, holding an active certificate or license in another state, meets the qualifications and requirements for licensure based on satisfactory completion of education, training, and/or work experience determined equivalent to Oregon standards, and further that the applicant has demonstrated competency by satisfactory completion of a national or state written and/or practical examination recognized or approved by the agency.

(28) "Renew" means to extend a current license for a year beyond expiration or to bring an expired license to current, active status.

(29) "Residence address or place(s) of business" means a street, route or location address, not a post office box.

(30) "Sharps" means any object that can penetrate the skin, including but not limited to needles, scalpel blades, lancets, glass tubes, or other instruments that could be broken during handling, and syringes that have been removed from their original sterile containers.

(31) "Sharps container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal. The container must be red and labeled with the "Biohazard" symbol.

(32) "Single Use" means products or items that are disposed of after each use, including but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings.

(33) "Sterilization" means destruction of all forms of microbotic life, including spores.

(34) "Suspend" refers to two distinct meanings defined by statute: ORS 690.385(2) pertaining to voluntary license expiration, and ORS 676.612 pertaining to disciplinary action.

(35) "Under direct supervision of a physician" means employed by and working in the office of a physician, with treatment ordered by and reimbursed to the physician.

Stat. Auth.: ORS 676.615, 690.405(9)

Stats. Implemented: ORS 676.615, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0020; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-505-0010

Fees

(1) Applicants and licensees are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Health Licensing Office are as follows:

(a) APPLICATION:

(A) Practitioner license: \$100;

(B) Electrology facility license: \$50;

(C) Tattooing facility license: \$100

(D) Demonstration permit: \$25

(E) Temporary facility Permit: \$25;

(b) PRACTITIONER LICENSE:

(A) Initial issuance and renewal of electrologist license: \$125;

(B) Initial issuance and renewal of permanent coloring or tattooing license: \$175;

(c) FACILITY LICENSE:

(A) Initial issuance and renewal of electrology facility license: \$150;

(B) Initial issuance and renewal of permanent coloring or tattooing facility license: \$250;

(d) EXAMINATION:

(A) Electrology — written: \$50;

(B) Electrology — practical: \$100;

(C) Permanent Coloring or Tattooing — written: \$50;

(D) Permanent Coloring or Tattooing — skills assessment: \$100;

(e) PERMITS:

(A) Demonstration permit: \$50;

(B) Temporary facility permit: \$50;

(f) OTHER FEES

(A) Late fee: \$10;

(B) Reactivation fee: \$50;

(C) Annual renewal for suspended license: \$50;

Stat. Auth.: ORS 676.605, 676.615, 690.415

Stats. Implemented: ORS 676.605, 676.615, 690.415

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; OHD 14-1998, f. 12-9-98, cert. ef. 12-15-98; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0155; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-510-0000

Electrology Definitions

In addition to definitions listed in OAR 331-505-0000, the following terms are specific to Divisions 510 through 545.

(1) "Access" means unrestricted use or availability, easy to approach or enter; may be adjacent to or within a reasonable distance.

(2) "Instruments" means devices, tools and implements used in the practice of electrolysis, which includes but is not limited to needles, probes, forceps, hemostases, or tweezers.

(3) "Modality" means manner of mode in which electricity is used to produce a therapeutic effect (i.e. electrolysis, thermolysis, the blend).

(4) "Needle" means the conductor as referred to in ORS 690.350(5) also called wires or probes.

Stat. Auth.: ORS 676.615, 690.405(9)

Stats. Implemented: ORS 676.615, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0020; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-515-0000

Approval of Schools

The Health Licensing Office shall recognize a school of electrolysis that has met the following requirements:

(1) The facility has been approved and registered by the Department of Education, Private Career Schools, and meets provisions of ORS 345 and rules adopted by the Department for licensure as a career school;

(2) A curriculum/course of study has been submitted to the agency which has been approved as meeting the curriculum objectives outlined under OAR 333-515-0010;

(3) An initial inspection has been conducted by the Department of Education and agency and the facility satisfactorily passed requirements for compliance with instruction and sanitary rules.

Stat. Auth.: ORS 690.410

Stats. Implemented: ORS 690.410

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0025; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-515-0010

Approved Course of Study

To be approved by the agency, a course of study shall include, at least 600 hours of training instruction. The course shall include at least 235 hours of theory and at least 365 hours of practical experience in the following areas:

(1) Laws and rules: 15 hours of training in theory.

(2) Bacteriology: 20 hours of training in theory.

(3) Infection control and sterilization: 20 hours of training in theory and 15 hours of practical training.

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- (4) Anatomy and physiology: 20 hours of training in theory.
 - (5) Endocrinology: 20 hours of training in theory.
 - (6) Structure, dynamics and diseases of skin and hair: 30 hours of training in theory.
 - (7) Circulatory and nervous system: 20 hours of training in theory.
 - (8) Electricity: 15 hours of training in theory.
 - (9) Electrolysis (galvanic): 20 hours of training in theory and 115 hours of practical training.
 - (10) Thermolysis: 20 hours of training in theory and 115 hours of practical training.
 - (11) Combinations of electrolysis and thermolysis (blend): 20 hours of training in theory and 110 hours of practical training.
 - (12) Draping and positioning: 5 hours of training in theory and 5 hours of practical training.
 - (13) Professional ethics and business practices: 10 hours of training in theory and 5 hours of practical training.
- Stat. Auth.: ORS 690.405, 690.410
Stats. Implemented: ORS 690.405, 690.410
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0030; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-515-0020

Equivalent Course of Study; Experience Equivalency Standards

An applicant shall not be required to comply with the training requirements under OAR 331-515-0010 to the extent the agency determines that training and/or work experience obtained is equivalent to minimum requirements based on documentation of two years full-time or four years part-time active work experience in the field of electrolysis.

Stat. Auth.: ORS 690.365, 690.405, 690.410
Stats. Implemented: ORS 690.365, 690.405, 690.410
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0045 & 333-305-0050; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-515-0030

Application for Licensure

(1) Individuals applying for licensure to practice electrolysis must meet the requirements of OAR 331-030-0000 in addition to the provisions of this rule.

(2) Applicants must submit a completed application form prescribed by the agency, which shall contain the information listed in OAR 331-030-0000(5) and be accompanied by payment of the application, examination and license fees.

(3) Applicants shall be at least 18 years of age, and shall provide documentation confirming date of birth, such as a copy of the birth certificate, driver's license, passport or school/military/governmental record.

(4) Applicants shall have completed four years of standard high school education or the equivalent. Acceptable documentation is a high school diploma, letter from school or military records verifying completion, GED passing scores, or proof of enrollment in a post-secondary educational institution.

(5) The completed application must include submission of satisfactory evidence of equivalency as required by the agency pursuant to OAR 331-515-0020, or by one of the following pathways for licensure:

(a) **OFFICIAL TRANSCRIPT:** The document shall be mailed directly to the agency from a licensed or accredited school or an equivalent institution recognized by the agency, showing completion of the prescribed course of study, listed in OAR 331-515-0010 or its equivalent approved by the agency, and shall be issued by:

(A) A school of electrolysis licensed by the Department of Education, Private Career Schools, under ORS 345;

(B) A licensed or accredited school of electrolysis located in another state where the practice of electrolysis is unregulated; or

(C) An institution recognized by the agency, such as a medical facility or other county, state, or federal agency or entity, where training and education is provided by means of a standardized course of study, adhering to prescribed curriculum objectives and criteria.

(D) The transcript must be mailed or transmitted directly to the agency or delivered in person in a sealed envelope by an authorized courier.

(b) **OUT OF STATE LICENSURE:** Applicants who hold an electrolysis license issued from another state shall submit an original Affidavit of Licensure form affixed with the state's seal or stamp, signed by the regulatory authority where the applicant is currently licensed, and mailed directly to the agency office by the regulatory authority.

(A) The form shall indicate whether the applicant satisfactorily passed a national or state prepared written and practical examination.

(B) Additional documentation may be required substantiating completion of equivalent training requirements listed in OAR 331-515-0020.

Stat. Auth.: ORS 690.365, 690.405
Stats. Implemented: ORS 690.365, 690.405
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0035; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-520-0000

Examination Authorization

(1) The agency will conduct examinations for licensure. Applicants will not be approved for an examination until all documentation and fee requirements have been completed.

(2) The agency reserves the right to alter or adjust examination dates, times and locations as it deems necessary to meet emergency situations and will notify applicants and schools in advance whenever possible.

(3) The agency will mail notice to each applicant approved for the practical examination by U.S. Postal Service, at least 15 calendar days prior to the examination. Notification will not be given by any other means.

(4) Applicants shall be required to present photographic identification, such as a driver's license and their original Social Security card at the examination.

Stat. Auth.: ORS 690.370, 690.405
Stats. Implemented: ORS 690.370, 690.405
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0075 & 333-305-0080; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-520-0010

Examination for Electrologist License

(1) The examination for an electrolysis license shall consist of two sections: a written examination and a practical examination. Applicants shall take all sections of both parts of the examination on the first attempt.

(2) The written examination shall consist of 200 multiple-choice questions. Questions shall cover subjects required in an approved course of study in accordance with OAR 331-515-0010.

(3) The practical examination will consist of an actual demonstration of hair removal on a model provided by the applicant. Information on the practical examination procedures will be mailed to applicants with the examination notice. Refer to OAR 331-520-0000(3).

(4) Graded criteria shall include model preparation, safety, sterilization and infection control, technique, use of instruments, and aftercare.

(5) The examination shall be "closed book", and shall be prepared or conducted in English.

(6) The written and practical sections of the examination will be scored individually, not added or averaged together.

(7) A passing score of at least 75 percent on each section of the examination is required before a license will be issued.

(8) Applicants failing to successfully complete the examination process and attain licensure within two years from the date of the initial application or the most recent examination attempt, whichever is later, shall be required to:

(a) Reapply for examination according to OAR 331-515-0030;

(b) Pay the appropriate fees; and

(c) Retake examination.

Stat. Auth.: ORS 690.370, 690.405, 690.430
Stats. Implemented: ORS 690.370, 690.405, 690.430
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0065; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-520-0030

Special Examination Accommodations

(1) Applicants who have a learning, psychological, physical, or other disability, which requires an accommodation to the regular testing environment may request a special examination.

(2) Requests for accommodation shall be made on forms provided by the agency and shall contain supporting documentation completed by a licensed professional holding appropriate credentials qualified to certify that the applicant's disabling condition requires the requested test accommodation.

(3) A "Request for Accommodation" form must be submitted to the agency at least 30 calendar days in advance of the scheduled examination date to make appropriate arrangements contingent upon the type of accommodation requested.

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(4) All special examinations are conducted at the agency. If the agency is unable to accommodate the disability on-site, special arrangements will be arranged for an adequate test site.

Stat. Auth.: ORS 690.370, 690.405

Stats. Implemented: ORS 690.370, 690.405

Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-520-0040

Examination Conduct; Disqualification

(1) Examinations are conducted in a designated area with restricted access. Authorization must be provided by the agency before bringing any material or electronic equipment or devices into the examination. Receiving or attempting to receive assistance during the examination, including assistance from other individuals, from notes books or devices or taking unauthorized items into the examination area shall invalidate the examination and result in forfeiture of the examination and fees.

(2) Examination Disqualification: A candidate may be immediately disqualified during or after the examination for conduct that interferes with the examination. Such conduct includes:

(a) Giving or receiving aid, directly or indirectly during the examination process;

(b) Obtaining help or information from notes, books, or other individuals to answer questions;

(c) Removing or attempting to remove any examination-related information, notes or materials from the examination site;

(d) Failing to follow directions relative to the conduct of the examination; and

(e) Exhibiting behavior which impedes the normal progress of the examination.

(3) Disqualification will invalidate the examination and result in forfeiture of the examination fees. The applicant will be required to reapply, submit additional examination fees and request in writing to schedule another examination. Reexamination will be scheduled at a date, time and place determined by the Director following the date of disqualification. Reexamination will be conducted at the agency.

Stat. Auth.: ORS 690.410

Stats. Implemented: ORS 690.410

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0090; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-520-0060

Examination Review Procedures

(1) Opportunity to review failed sections of the written examination, conducted by use of the electronic touch screen computer testing system, are provided at the conclusion of each examination question/answer selection, or immediately following conclusion of the entire examination. Review of failed examination sections at a later time or date is prohibited.

(2) Applicants retaking the examination must present photographic identification such as a driver's license and their original Social Security card as required by OAR 331-520-0000.

Stat. Auth.: ORS 676.615, 690.405

Stats. Implemented: ORS 676.615, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0100; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-520-0070

Retake of Examination Sections; Additional Training

(1) Failed sections of the examination may be retaken at the next available examination date and time, as scheduling allows. Retaking a failed examination requires registration and payment of the examination fees.

(2) Applicants who fail the examination three times (first attempt plus two retakes) must obtain an additional 100 hours of theory training within their scope of practice through an Oregon career school licensed under ORS 345.010 to 345.450 before they will be eligible to retake the examination.

(3) Prior to an applicant's fourth examination attempt, an official transcript must be received from an Oregon licensed career school which verifies that the applicant has satisfactorily completed the additional hours of instruction.

Stat. Auth.: ORS 690.370, 690.405

Stats. Implemented: ORS 690.370, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0105 & 333-305-0110; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-525-0000

License Issuance; Renewal

(1) Licensees are subject to the provisions of OAR 331-030-0010 regarding issuance and renewal of a license, and to the provisions of OAR 331-030-0020 regarding authorization to practice, identification and requirements for issuance of a duplicate authorization.

(2) Renewal payments received by the agency, or postmarked, after the expiration date but within one year of expiration, will be assessed a late fee in addition to the annual renewal fee.

(3) A license which has been expired for more than one year but less than three, shall be deemed suspended and may be reactivated by payment of the following fees listed in OAR 331-505-0010:

(a) A suspended renewal fee for each year expired;

(b) A reactivation fee; and

(c) A renewal fee.

(4) Failure to meet continuing education requirements listed in OAR 331-530-0000 will require reapplication, submission of application fee, examination fees and one-year license fee, and successfully passing all sections of the examination before a license will be reissued.

(5) Failure to renew or reactivate a license within three years from the date of expiration will require submitting a new application and successfully passing the qualifying examination according to provisions of OAR 331, Divisions 515 and 520 before a license will be reissued.

Stat. Auth.: ORS 690.385

Stats. Implemented: ORS 690.385

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0115; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-525-0020

Display of License

The practitioner and facility license must be posted in public view.

Stat. Auth.: ORS 676.615, 690.380

Stats. Implemented: ORS 676.615, 690.380

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0140; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-525-0035

Facility License Issuance and Renewal; Cooperation in Inspections

Beginning on October 1, 2004, all facilities must be licensed to provide electrolysis services prior to operating electrology facilities.

(1) The agency will issue a facility license to qualified persons, as provided in OAR 331-030-0010, if the applicant:

(a) Is at least 18 years of age, if the applicant is a natural person, as required in ORS 690.365(2). If the applicant is an entity other than a natural person, the entity must be formed and operated in accordance with Oregon law;

(b) Has registered with the Corporations Division and designated an assumed business name prior to applying for a facility license (unless doing business under the full name of the owner);

(c) Applies on a form prescribed by the agency and pays the required application and license fees;

(d) Complies with all applicable rules and regulations;

(e) Certifies that application information is correct; and

(f) Meets the specifications for building, fire and plumbing codes as specified in OAR 565-535-0000 and complies with exit and fire standards established by the Building Codes Agency and Office of the State Fire Marshal.

(2) Facility license applicant must provide a map or direction to the business premises if the facility is located in a rural or isolated area, and submit a copy of the spore test results from applicant's autoclave, or submit a signed attestation requesting an exemption under OAR 331-540-0020(2) based on exclusive use of prepackaged sterile electrology equipment, including needles.

(3) A facility license holder must comply with the provisions of OAR 331-030-0010 regarding issuance and renewal of a facility license.

(4) Each facility license holder must:

(a) Allow the agency's enforcement officer to inspect the facility when it is open for business;

(b) Ensure employees cooperate with agency enforcement officers and refrain from impeding an inspection in any way;

(c) Contact the agency in writing to make arrangements for an inspection if the agency has been unable to perform an annual inspection because the facility was closed.

Stat. Auth.: ORS 676.615, 690.360(6), 690.405(12)

Stats. Implemented: ORS 676.615, 690.360(6), 690.405(12)

Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

ADMINISTRATIVE RULES

331-525-0038

Facility Located in Residence

A facility located in a residence must comply with the provisions of OAR 331-525-0035 in addition to:

- (1) Have an identifying house number or a sign, which is easily visible from the street and indicates the location of the facility;
- (2) Be equipped with the structures, accommodations, and equipment which the agency requires for all facilities;
- (3) Have an entry that is separate from the entry to the living area of the home. The living area of the home shall be separated from the facility by solid walls extending from floor to ceiling, with any connecting doors kept closed while the facility is in actual operation.
- (4) Licensed electrologists operating in their residence prior to July 1, 2004, will not be subject to the requirements listed in subsection (3) of this rule, until such time as a change in the business location is made.

Stat. Auth.: ORS 676.615, 690.360(6), 690.405(12)
Stats. Implemented: ORS 676.615, 690.360(6), 690.405(12)
Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-525-0040

Practicing at Location Other Than Named Place(s) of Business

(1) Licensees shall not practice at any location other than the place or places of business listed with the agency. However, licensees may provide services outside the premises of a licensed facility on persons residing in a health care facility or persons confined to their residence through medical disability or restriction.

(2) All licensees who perform services at locations listed in subsections (1) of this rule or at more than one business location shall carry their license with them and post it while working.

Stat. Auth.: ORS 676.615, 690.390, 690.405(9)
Stats. Implemented: ORS 676.615, 690.390, 690.405(9)
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0185; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-525-0055

Facility License Requirements

(1) A facility shall meet the requirements for a new facility (refer to OAR 331-525-0035) and submit a new facility application and required fees when any of the following conditions exist:

(a) A facility is purchased from the current or previous owner, partnership or corporation. Facility licenses are not transferable from person-to-person or from business-to-business;

(b) There is a change in the legal ownership, partnership or holding of a facility regulated under ORS 690 and OAR 331, such as:

- (A) A partner(s) or co-owner(s) is added; or
- (B) A partner(s) or co-owner(s) is removed due to the death of a facility owner(s).

(c) An existing facility moves or relocates to a new physical address. Facility licenses are not transferable from location-to-location.

(2) Facility owners closing their facilities shall:

(a) Submit written notice to the agency within five business days of a facility closure, indicating whether the closure is permanent or of a temporary duration. Notice of temporary facility closure shall specify the anticipated date of resuming business operations;

(b) If notice of a permanent facility closure was submitted, and the license holder (same owner) reopens the facility while the license is still in active current status, the facility owner shall submit notice to the agency prior to reopening the facility and resuming business operations/services.

Stat. Auth.: ORS 690.405
Stats. Implemented: ORS 690.405
Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-525-0060

Demonstration Permit

(1) "Demonstration permit" is an authorization pursuant to ORS 690.405 to practice on a limited basis for a maximum of 30 consecutive calendar days.

(2) A person not licensed under ORS 690.365, who intends to demonstrate, teach or perform electrolysis services temporarily for educational purposes, where services are not performed upon the public, must first obtain a demonstration permit from the agency.

(3) To be granted a demonstration permit, a person must meet the following requirements:

- (a) Submit an application on a form prescribed by the agency;
- (b) Provide satisfactory evidence of holding a valid license in their state or country.
- (c) Describes the purpose for which the permit is sought; and

(d) Pay the required application and permit fees.

(4) The demonstration permit shall specify the period during which the person is permitted to demonstrate, teach or perform services.

Stat. Auth.: ORS 676.615, 690.405
Stats. Implemented: ORS 676.615, 690.405
Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-525-0065

Temporary Facility Permit

(1) "Temporary facility permit" is an authorization pursuant to ORS 690.405 to operate a facility on a limited basis, not to exceed 30 consecutive calendar days, at locations away from the primary facility, such as fairs, carnivals or bazaars.

(2) A person who intends to operate a facility on a limited basis away from a primary licensed facility must first obtain a temporary facility permit from the agency.

(3) To be granted a temporary facility permit, a person must meet the following requirements:

(a) Be 18 years of age or older, if the applicant is a natural person. If the applicant is an entity other than a natural person, the entity must be formed and operated in accordance with Oregon law;

(b) Apply on forms prescribed by the agency and provide the required information and application fees.

(4) A temporary facility must:

(a) Receive the permit and post the authorization in public view before opening for business;

(b) Comply with the rules of the agency concerning health, safety and infection control;

(c) Comply with the applicable health and safety laws and rules of the agency and any other state agencies;

(d) Pay the required permit fees.

(5) The temporary facility permit shall specify the period during which the permit is valid.

Stat. Auth.: ORS 676.615, 690.405
Stats. Implemented: ORS 676.615, 690.405
Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-530-0000

Continuing Education for License Renewal

To maintain licensure in the field in which they are licensed to practice, electrologists must comply with the following continuing education requirements:

(1) Complete 20 clock hours of satisfactory continuing education courses either as one unit or combination of units, not less than one hour each, every three years.

(2) Satisfactory continuing education courses shall fit into the approved curriculum objectives listed in ORS 690.410(1) and the courses of study outlined in OAR 331-515-0010 and must be obtained by:

(a) Participation or attendance at an instructional program presented, recognized, or under the auspices of any permanently organized institution, agency, association or completion and certification by an approved national home study organization; or

(b) Self-study, participation, or attendance not covered by subsection (a) of this rule may comprise up to eight hours of the total requirement. Self-study may include continuing education obtained by means of the following:

(A) Correspondence courses;

(B) Review of publications, textbooks, printed material, or audio cassette(s);

(C) Viewing of films, videos, or slides; or

(c) Attendance at meetings of the Advisory Council for Electrologists and Permanent Color Technicians and Tattoo Artists may be credited for a maximum of three hours per meeting, totaling no more than six hours per three year period.

(3) Licensees shall report compliance with the continuing education requirement through attestation on the license renewal document. Licensees shall be subject to the provisions of OAR 331-530-0020 pertaining to periodic audit of continuing education.

(4) Continuing education requirements apply whether the applicant renewing a license is living or working within Oregon or outside of the state, so long as Oregon licensure is maintained.

(5) Hours of continuing education, in excess of the requirement for renewal every three years, will not be carried forward.

(6) Continuing education is required for renewal, every three years, even if the license has been inactive or suspended during that period.

(7) To ensure adequate evidence of attainment of required continuing education is available for audit or investigation by the Health Licensing

ADMINISTRATIVE RULES

Office, records of attendance must be maintained by licensees for two years following the three-year continuing education cycle and renewal of the electrologist license.

(8) Licensees failing to obtain 20 clock hours of continuing education every three years must reapply and qualify according to the requirements of OAR 331-515-0030 and successfully pass a written and practical examination.

Stat. Auth.: ORS 676.605, 676.615, 690.385
Stats. Implemented: ORS 676.605, 676.615, 690.385
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0125; Renumbered from 333-305-0130; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04, Renumbered from 331-530-0010

331-530-0020

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Health Licensing Office will audit a select percentage of licenses determined by the Council to verify compliance with continuing education requirements.

(2) Practitioners notified of selection for audit of continuing education attestation shall submit to the agency, within 30 calendar days from the date of notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-530-0000.

(3) Documentation of attendance at a program or course provided by the sponsor must include:

- (a) Name of sponsoring institution/association or organization;
- (b) Title of presentation and description of content;
- (c) Name of instructor or presenter;
- (d) Date of attendance and duration in hours;
- (e) Course agenda;
- (f) Official transcript, diploma, certificate, statement or affidavit from the sponsor, attesting to attendance.

(4) Documentation substantiating completion of continuing education through self-study, must show a direct relation to the subjects outlined in OAR 331-515-0010, be submitted on forms provided by the agency and include the following:

- (a) Name of sponsor or source, type of study, description of content, date of completion and duration in clock hours;
- (b) Name of approved correspondence courses or national home study issues;
- (c) Name of publications, textbooks, printed material or audio-recorded material, including date of publication, publisher, and ISBN issued.
- (d) Name of films, videos, or slides, including date of production, name of sponsor or producer and catalog number.

(5) If documentation of continuing education is invalid or incomplete, the licensee must correct the deficiency within 30 calendar days from the date of notice. Failure to correct the deficiency within the prescribed time shall constitute grounds for disciplinary action.

(6) Misrepresentation of continuing education, or failing to meet continuing education requirements or documentation may result in disciplinary action, which may include, but is not limited to, assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth.: ORS 676.605, 676.615, 690.385, 690.405
Stats. Implemented: ORS 676.605, 676.615, 690.385, 690.405
Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-535-0000

Compliance with all Applicable Regulations

(1) Electrologists shall observe all applicable state regulations pertaining to public health and safety. Compliance with state building, fire, plumbing, and electrical regulations is required.

(2) In addition, when an employee/employer relationship exists, practitioners shall comply with ORS 654 the Oregon Safe Employment Act.

(3) Electrologist shall observe and adhere to all Oregon Occupational Safety & Health Codes (OR-OSHA), OAR 437, 29 CFR 1910.1030 Bloodborne Pathogens.

(4) Every electrologist shall have a written Exposure Control Plan. All procedures developed for the facility's exposure control plan shall be in compliance with OSHA state and federal regulations and with current Centers for Disease Control (CDC) standard for public service workers.

(5) Only authorized equipment or products may be utilized, and in addition, must only be used in a manner approved by manufacturers and appropriate regulatory agencies.

Stat. Auth.: ORS 654, 676.605, 676.615, 690.390, 690.405
Stats. Implemented: ORS 654, 676.605, 676.615, 690.390, 690.405
Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-535-0010

Electrologist Practice Standards: Restrictions

(1) Electrologists may provide clients with written information on electrolysis procedures, the purpose for asking specific questions regarding the client's general health, and that any recommendation for medical attention is not to be construed as a medical referral or diagnosis of a physical disease or ailment.

(2) Licensees shall keep an individual record of each client. That record shall include: name and address of client; type of treatment required/requested; type of hair or skin; date and duration of each treatment; special instructions or notations relating to the treatment precautions or needs, such as allergies, pacemaker, etc.; and, name and telephone of referring doctor, if applicable.

(3) Electrologists are prohibited from performing services under the following conditions or circumstances (for blood borne diseases only, refer to OAR 331-535-0020):

(a) Licensee or client has a disease or condition which has been diagnosed by a physician to be in a communicable or transmittable form during treatment;

(b) Licensee determines by direct observation or communication with client, that client has or may have a suspected communicable disease or condition;

(c) Licensee knows or should have reasonably known from the state of his/her own physical condition, a communicable disease or condition may exist; or

(d) Treatment in areas with high propensity towards bacterial colonization, such as nostrils and ear canals.

(4) Electrologists must first obtain written authorization from a physician when any of the following exists:

- (a) Request for hair removal from moles or birthmarks;
- (b) Removal of eyelashes;
- (c) Clients with diabetes; or
- (d) Clients with heart problems or pacemaker.

Stat. Auth.: ORS 690.390
Stats. Implemented: ORS 690.390
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0245; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-535-0020

Communicable and Blood Borne Diseases

A licensee providing service or working in a facility while diagnosed with having acquired an immunodeficiency virus and related immunodeficiency conditions or Hepatitis viruses (B, C and/or D) shall observe and follow all current Centers for Disease Control (CDC) standards for public service workers regarding personal protection equipment and disposal of blood or bodily fluid contaminated articles, tools and equipment. This includes practitioners or employees providing services to clients who have been diagnosed with having an immunodeficiency virus, related conditions or the Hepatitis viruses (B, C and/or D).

NOTE: It is the position of the agency that human immunodeficiency virus (HIV) is the cause of acquired immunodeficiency syndrome (AIDS) and related immunodeficiency conditions. This virus, as well as Hepatitis B virus (HBV), Hepatitis C virus (HCV) and Hepatitis virus (HVD) may be transmitted by sharp instruments contaminated by blood or other body fluids, if standard precautions are not followed. As the carriers of these viruses may have no symptoms, the most prudent course to follow is to treat body fluids from all persons with the same high standards of caution and to rigorously follow established safety and infection control practices as required by the law and rules of the agency. There is no published evidence to support casual transmission of HIV, by sneezing or touching, even in close household settings involving AIDS patients and family members caring for them at home. Because HIV is not spread by casual means and because of the inadequacies of the HIV antibody test, there is no reason for the agency to require blood tests prior to certification and/or licensure. Good hand washing after glove removal and between each client is imperative and the most important procedure for prevention of all infections, including HIV. Uniform body fluid precautions are ample to prevent transmission of HIV, HBV, HCV and/or HDV in a facility setting.

Stat. Auth.: ORS 676.605, 676.615, 690.390
Stats. Implemented: ORS 676.605, 676.615, 690.390
Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-535-0030

Handwashing/Protective Gloves; Handling Disposable Materials

(1) **HAND WASHING:** Electrologists shall observe and adhere to the following hand washing standards when serving clients:

(a) Hands must be washed before and after treatment of each client, and before putting on gloves and immediately after gloves are removed;

(b) Thorough hand washing shall be by use of soap and water or other alternative hand washing product, such as jell, aerosol spray, foam, or pre-packaged hand wipes, immediately before and after serving each client as needed. Use of bar soap is prohibited.

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(2) **PROTECTIVE GLOVES:** Electrologists shall observe and adhere to the following protective glove standards when serving clients:

(a) A new pair of disposable gloves must be worn during the treatment of each client;

(b) Hands must be washed in accordance with the hand washing standards stated in subsection (1) of this rule before putting on gloves and immediately after gloves are removed;

(c) If an electrologist uses low-powered gloves, the excess exterior powder must be removed to prevent powder contact with the client's skin during treatment;

(d) When a treatment session is interrupted:

(A) A protective covering must be used over the gloved hand/hands; or

(B) Gloves must be removed and discarded.

(e) When gloves are removed during a treatment session, hands must be washed and a fresh pair of gloves used;

(f) Gloves must be worn during the procedures of mechanical pre-cleaning, cleaning, rinsing, and drying of needles/probes and forceps/tweezers;

(g) Torn or perforated gloves must be removed immediately, and hands must be washed after gloves are removed.

(3) **DISPOSABLE MATERIALS:** Electrologists shall observe and adhere to the following disposable material standards when serving clients:

(a) All waste materials related to treatment shall be disposed of in a covered container after each client service;

(b) Disposable materials in contact with blood and/or body fluids shall be placed in a sealable plastic bag, separate from sealable trash or garbage liners, and then disposed of in a covered container;

(c) Disposable sharp objects in contact with blood and/or body fluids shall be disposed of in an appropriate "sharps container" as defined in OAR 331-505-0000(31);

(d) Electrologists shall have both sealable plastic bags and sealable rigid containers available at the facility.

(4) The client's skin shall be cleansed by applying an antiseptic or antibacterial solution prior to and following treatment.

Stat. Auth.: ORS 676.605, 676.615, 690.390, 690.405

Stats. Implemented: ORS 676.605, 676.615, 690.390, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0210, 333-305-0215 & 333-305-0235; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-535-0050

Required Equipment

(1) All facilities shall have a treatment area or operatory that is separate, private, or screened from the entrance, waiting area, and/or other treatment areas.

(2) Facilities shall be kept clean and orderly, and equipment shall be maintained in good repair

(3) All surfaces (counters, tables, equipment, client chairs or recliners) in treatment and sterilization areas shall be made of smooth, non-absorbent and non-porous material.

(4) All floors and walls shall be easily cleanable. Concrete blocks or other masonry used in wall construction shall be covered or made smooth and sealed for a washable surface.

(5) A high-level disinfectant or bleach solution, used according to the manufacturer's instructions, shall be used to disinfect surfaces contaminated by blood or bodily fluids.

(6) Pets or other animals shall not be permitted in the business facility. This prohibition does not apply to therapy animals, trained guide animals for the disabled, sightless or hearing impaired or to fish in aquariums.

(7) Electrologists shall maintain at the place of business an adequate supply of approved disinfecting or sterilizing equipment, tools/implements, articles and materials for usage requirements and volume of business. The following equipment shall be maintained at the place of business:

(a) A Federal Communications Commission (FCC) approved epilator;

(b) Sufficient supply of needles and tweezers to supply sterile instruments for each client treated;

(c) A treatment light;

(d) Choice of hemostat, forceps, or tweezer to transfer sterilized instruments;

(e) Protective gloves;

(f) Sealable plastic bags and sharps container.

Stat. Auth.: ORS 676.605, 676.615, 690.390, 690.405(9)

Stats. Implemented: ORS 676.605, 676.615, 690.390, 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0165, 333-305-0175, 333-305-0180 & 333-305-0190; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-535-0060

Water Supply Requirements and Standards

(1) The quality and construction of facility water supplies shall meet the requirements of ORS Chapter 448 and the State Plumbing Code, OAR 918, Division 750.

(2) Facility water supplies shall have a minimum of 20 pounds pressure per square inch in accordance with the State Plumbing code.

(3) All facilities shall have easy and adequate supply of both hot and cold running water and wash basins on the facility premises or as part of surrounding premises or adjacent to the facility but separate from a public restroom.

(4) Waste from toilets or lavatories shall be discharged directly into a public sewer or by a method meeting the requirements of ORS 454.

(5) Hand washing accommodations shall be provided in work areas where employees are exposed to hazardous materials, which will have a harmful effect on or be absorbed through the skin if the contamination is not removed.

(6) Washing accommodations shall be maintained in a clean and sanitary condition.

Stat. Auth.: ORS 448, 454, 676.605, 676.615, 690.390 & 690.405(9)

Stats. Implemented: ORS 448, 454, 676.605, 676.615, 690.390 & 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0165; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-535-0070

Compliance with Indoor Clean Air Act

Any public place in a facility shall be governed under the Oregon Indoor Clean Air Act as it appears in ORS 433.835 through 433.875.

Stat. Auth.: ORS 676.615, 690.390, 690.405(9)

Stats. Implemented: ORS 433.835 - 433.875, 676.615, 690.390, 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0170; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-535-0080

Waste Receptacles

(1) All waste material related to treatment shall be deposited in a covered container following service for each client.

(2) Waste disposed of in receptacles located in reception and/or restroom areas is limited to materials, which are not practice-related or used in the performance of any client services. Waste receptacles located in these areas are exempt from the covered container requirements listed in subsection (1) of this rule.

(3) Outer surface of waste disposal containers shall be kept clean.

Stat. Auth.: ORS 676.615, 690.390, 690.405(9)

Stats. Implemented: ORS 676.615, 690.390, 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0240; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-540-0000

Cleaning Requirements and Standards

(1) All items in direct contact with the client's skin that do not require disinfecting shall be clean.

(2) All items in direct contact with the client's skin that cannot be cleaned or disinfected shall be disposed of in a covered waste receptacle immediately after use.

(3) All substances used in the practice of electrolysis shall be dispensed from containers in a manner to prevent contamination of the unused portion.

(4) All disinfecting solutions and/or agents shall be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business.

(5) The agency shall authorize the use of disinfecting agents provided those agents meet the criteria set forth in OAR 331-505-0000(12) and (15).

Stat. Auth.: ORS 676.605, 676.615, 690.390, 690.405

Stats. Implemented: ORS 676.605, 676.615, 690.390, 690.405

Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-540-0010

Instrument Cleaning; Sterilization Standards

(1) Prior to sterilizing, instruments shall be brushed and/or swabbed to remove foreign material or debris, rinsed and then cleaned by one of the following approved methods:

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(a) Immersing in detergent and water in an ultra sonic unit that operates at 40 to 60 hertz, followed by a thorough rinsing and wiping; or

(b) Submerging and soaking in a protein dissolving detergent/enzyme cleaner, followed by a thorough rinsing and wiping.

(2) Instruments or other equipment which are "heat-sensitive" shall be disinfected by complete immersion of the object(s) or portion(s) thereof to be disinfected, in a high-level disinfectant which has demonstrated tuberculocidal activity, and used according to the manufacturer's instructions.

(3) The removable tip of an epilator needle or probe holder shall be removed after each treatment, cleaned and then soaked for in a commercial sporicide solution according to manufacturers' instructions.

(4) Cleaned instruments used in the practice of electrolysis shall be placed in sterile bags or containers with color strip indicators, sterilized by exposure to one cycle of an approved sterilizer listed in OAR 331-540-0020.

Stat.: Auth. ORS 676.605, 676.615, 690.390, 690.405
Stats. Implemented: ORS 676.605, 676.615, 690.390, 690.405
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0200 & 333-305-0205; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-540-0020

Approved Sterilization Modes

(1) Electrologists must sterilize instruments used in the practice of electrology by means of an approved sterilizing device registered and listed with the U.S. Food and Drug Administration, used, cleaned and maintained in accordance with the manufacturer's instructions. Approved sterilizing devices include an autoclave (steam or chemical) or dry heat unit.

(2) In lieu of sterilization methods listed in (1) above, a licensee may use single-use, prepackaged, sterilized equipment, obtained from commercial suppliers or manufacturers.

(3) Sterilizing devices shall be tested during each sterilizing cycle by means of a commercial test mechanism, such as but not limited to color strip indicators to measure temperature control and general functioning of the equipment.

(4) Sterilizing devices shall be tested at least quarterly for functionality and thorough sterilization by using a commercial biological monitoring (spore) system to assure all microorganisms, including spores, have been destroyed.

(5) Biological test results must be on laboratory letterhead and must contain the test date, and the name, model and serial number of the unit tested. Biological test results shall be retained for a two-year period and must be available for inspection at all times.

Stat. Auth.: ORS 676.605, 676.615, 690.390, 690.405
Stats. Implemented: ORS 676.605, 676.615, 690.390, 690.405
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0195; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-545-0000

Investigative Authority

The Health Licensing Office may initiate and conduct investigations of matters relating to the practice of electrolysis, permanent coloring or tattooing, pursuant to ORS 676.608 and 676.618, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and 690.407.

Stat. Auth.: ORS 676.608, 676.618, 690.405, 690.407
Stats. Implemented: ORS 676.608, 676.618, 690.405, 690.407
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0255; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-545-0020

Schedule of Penalties for Licensing Violations; Violation of Standards

The agency has adopted the following presumptive penalty schedule for the first and second violations of the following laws and rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For subsequent violations the provisions of OAR 331-020-0060 will apply.

(1) Practicing or holding one's self out as available to practice, or using the title electrologist, without first receiving a current, valid license is a violation of ORS 690.355 and OAR 331-030-0020(1)(f) and may incur a penalty of \$1,000.

(2) Practicing or holding one's self out as available to practice, or using the title electrologist, with an expired or suspended license is a violation of ORS 676.612(4), 690.355, OAR 331-030-0010(4) and/or 331-030-0020(1)(f) and may incur a penalty of \$1,000.

(3) Failing to post a current, valid license in public view is a violation of ORS 690.038(1) and OAR 331-525-0020 and may incur a penalty of \$200.

(4) Failing to provide appropriate photographic identification upon request by the agency is a violation of ORS 676.612(1)(o) and OAR 331-030-0020(4) and may incur a penalty of \$1,000.

(5) Failing to submit changes of required licensing information within the time frame set in rule is a violation of OAR 331-010-0040(1) and/or (2) and may incur a penalty of \$50.

(6) Practicing at location other than places of businesses designated to the agency, except as permitted by rule is a violation of OAR 331-525-0040(1) and may incur a penalty of \$500.

(7) Using a reproduction of a license in place of an original is a violation of OAR 331-030-0020(3) and may incur a penalty of \$50.

(8) Failing to allow inspection of the premises by the agency is a violation of ORS 676.612(1)(o), OAR 331-020-0070(2)(d) and/or 331-525-0035(4) and may incur a penalty of \$1,000.

(9) Failing to meet the facility or practice standards adopted by the agency is a violation of OAR 331-535-0000(1), 331-535-0010, ORS 676.612(1)(j) and 690.390 and may incur a penalty of \$500.

(10) Failing to provide a private or separate treatment area for clients is a violation of OAR 331-535-0050(1) and may incur a penalty of \$100.

(11) Except as provided by rule, allowing animals in the facility is a violation of OAR 331-535-0050(6) and may incur a penalty of \$100.

(12) Failing to maintain the required equipment or have approved test indicators at facility is a violation of ORS 690.390(1) and/or (2) and OAR 331-535-0050(7) and may incur a penalty of \$500 and/or suspension or revocation.

(13) Failing to use approved test indicators or mechanism as required to ensure proper sterilization is a violation of OAR 331-540-0020(3), (4) and/or (5) and may incur a penalty of \$500.

(14) Failing to sterilize instruments using an approved mode is a violation of ORS 690.390(1) and/or (2) and OAR 331-540-0020(1) and/or (2) and may incur a penalty of \$1,000.

(15) Failing to meet sterilization standards is a violation of ORS 690.390(1), (2) and OAR 331-540-0010(2), (3) and/or (4) and may incur a penalty of \$1,000.

(16) Failing to clean instruments prior to sterilization is a violation of ORS 690.390(1) and OAR 331-540-0010(1) and may incur a penalty of \$1,000.

(17) Failing to wash hands before and after treatment and/or wear protective gloves is a violation of OAR 331-535-0030(1) and/or (2) and may incur a penalty of \$500.

(18) Failing to prepare treatment area on a client in accordance with agency standards is a violation of OAR 331-535-0030(4) and may incur a penalty of \$500.

(19) Failing to meet cleanliness and/or storage standards for linens is a violation of 331-535-0040 and may incur a penalty of \$500.

(20) Failing to meet storage requirements for instruments, products or chemicals is a violation of 331-540-0030 and may incur a penalty of \$500.

(21) Failing to dispose of materials contaminated with blood or bodily fluids in a sealable container or appropriate sharps container, or failing to have appropriate containers available is a violation of OAR 331-535-0030(3) and may incur a penalty of \$1,000.

(22) Failing to have required covered waste receptacles is a violation of ORS 690.390(2) and OAR 331-535-0080(1) and may incur a penalty of \$100.

(23) Performing a restricted treatment(s) is a violation of ORS 676.612(1)(j) and OAR 331-535-0010(3) and/or (4) and may incur a penalty of \$1,000.

(24) Failing to have and maintain client case history records is a violation of ORS 690.390(3) and OAR 331-535-0010(2) and may incur a penalty of \$500.

Stat. Auth.: ORS 676.605, 676.615, 690.407
Stats. Implemented: ORS 676.605, 676.615, 690.407
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0265; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-550-0000

Permanent Coloring and Tattooing Definitions

In addition to definitions listed in OAR 331-505-0000, the following terms apply as used in OAR 331, Divisions 550 through 590.

(1) "Access" means immediate unrestricted use or availability, easy to approach or enter.

(2) "Completed procedure" means, for the purposes of determining qualification for licensure under OAR 331-555-0010; a tattoo which has

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been finished, including any touchups or additional work following initial healing, and the client is released from service, as follows:

(a) Figurative tattooing includes outlining and shading, use of different size/configuration of needles, a new design on a client or a different client;

(b) Cosmetic tattooing includes eyeliner, eyebrows, lip liner, full lip color, repigmentation or camouflage but does not include beauty marks.

(3) "Direct supervision" means the teacher is present and actively involved in direct oversight and training to a person who has not completed the requirements of OAR 331-555-0010.

(4) "Instruments" means devices, tools and implements used in permanent coloring and tattooing services.

(5) "Needle" means the implement used to insert dyes or pigments into the dermis of the skin during permanent coloring or tattooing procedures.

(6) "Needle bar" means the metal or plastic device used to attach the needle to a tattoo machine.

(7) "Practical" means one-on-one training under the direct supervision of an teacher in the application of permanent coloring or tattooing.

(8) "Repigmentation" means recoloration of the skin:

(a) After dermabrasion, chemical peels, removal or resolution of birthmarks, vitiligo or other skin conditions which result in the loss of melanin to the skin;

(b) Scarring caused by surgical procedures, such as face lifts, mole or wart removal, cauterization, etc.;

(c) Burn grafts and other skin irregularities caused by burns or photo damage;

(d) Mastectomy, i.e. recreation of an areola or nipple; or

(e) Blotchy pigmentation requiring camouflage.

(9) "Theory" means all forms of relevant study, which do not involve the application of permanent makeup or tattoos on human skin. Theory may include but is not limited to review of videos or written matter, attendance at lectures, or application of tattoos or permanent makeup on materials other than human skin.

Stat. Auth.: ORS 676.615, 690.405(9)

Stats. Implemented: ORS 676.615, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0020; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-555-0010

Approved Course of Study

(1) To be approved by the Division, a course of study shall include, but is not limited to 360 hours of instruction. The course shall include 210 hours of theory and 150 hours of practical work. This practical work must include as a minimum 50 completed procedures.

(2) All practical applications performed during training in the subject areas listed in subsection (3) of this rule shall be counted toward meeting the minimum 150 hours practical tattooing experience.

(3) The Division's approved course of study shall include, but is not limited to, the following areas:

(a) Needles and needle bars: 20 hours of theory;

(b) Tattoo machines and equivalent equipment: 20 hours of theory;

(c) Equipment/Supplies: 20 hours of theory;

(d) Safety, Sanitation and Sterilization: 40 hours of theory;

(e) Basic color theory and pigments: 10 hours of theory;

(f) Design, art and placement: 10 hours of theory;

(g) Skin: 20 hours of theory;

(h) Client services 20 hours of theory;

(i) Business operations, including exposure control plan and federal regulations: 40 hours of theory;

(j) Oregon Laws and Rules: 10 hours of theory training.

(4) As part of the approved course of study, all hours of theory should be completed prior to practical work being performed on the general public.

(5) Detailed information pertaining to the Division approved course of study listing the above subject areas, content and scope, and required hours of instruction is on file with the Division office and may be obtained by written request from the Division.

Stat. Auth.: ORS 690.405, 690.410

Stats. Implemented: ORS 690.405, 690.410

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0030; HDLP 2-1999, f. & cert. ef. 7-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; Renumbered from 331-555-0020

331-555-0030

Experience Equivalency Standards

An applicant shall not be required to comply with the training requirements under OAR 331-555-0010 to the extent the agency determines that training and/or work experience obtained is equivalent to minimum requirements based on documentation of two years full-time or four years part-time active work experience in the field of permanent coloring or tattooing.

Stat. Auth.: ORS 690.365, 690.405, 690.410

Stats. Implemented: ORS 690.365, 690.405, 690.410

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0045 & 333-305-0050; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-555-0040

Application Requirements

(1) Individuals applying for licensure to practice permanent coloring or tattooing must meet the requirements of OAR 331-030-0000 in addition to the provisions of this rule.

(2) Applicants must submit a completed application form prescribed by the agency, which shall contain the information listed in OAR 331-030-0000(5) and be accompanied by payment of the application, examination and license fees.

(3) Applicants shall be at least 18 years of age, and shall provide documentation, confirming date of birth, such as a copy of the birth certificate, driver's license, passport or school/military/governmental record.

(4) Applicants shall have completed four years of standard high school education or the equivalent. Acceptable documentation is a high school diploma, letter from school or military records verifying completion, GED passing scores, or proof of enrollment in a post-secondary educational institution.

(5) The completed application must include submission of satisfactory evidence of required training under OAR 331-555-0010 by one of the following education and training pathways for licensure:

(a) **OFFICIAL TRANSCRIPT:** The document shall be mailed directly to the agency from a licensed or accredited school or an equivalent institution recognized by the agency, showing completion of the prescribed course of study, listed in OAR 331-555-0010 or its equivalent, approved by the agency, and shall be issued by:

(A) A school of tattooing licensed by the Department of Education, Private Career Schools, under ORS 345;

(B) A licensed or accredited school of tattooing located in another state where the practice is unregulated;

(C) An institution recognized by the agency, such as a medical facility or other county, state, or federal agency or entity, where training and education is provided by means of a standardized course of study, adhering to prescribed curriculum objectives and criteria.

(D) The transcript must be mailed or transmitted directly to the agency or delivered in a sealed envelope by an authorized courier.

(b) **OUT OF STATE LICENSURE:** A professional practicing under a valid permanent color or tattoo license issued by a city, state, or county which meets or exceeds Oregon standards must provide verification by the mailing of an original Affidavit of Licensure form affixed with the applicable state, county or city seal or stamp, signed by the regulatory authority where the application is currently licensed, and mailed directly to the agency by the regulatory authority.

(c) **EXPERIENCE EQUIVALENCY:** All other permanent color or tattoo professionals working in a city, county, state or country where the practice of permanent coloring and tattooing is unregulated, must provide documentation in the form of tax returns, authenticated by the federal Internal Revenue Service, verifying that the tax returns have been filed. Personal tax returns must substantiate that the individual acquired work experience through two years of active full-time practice in the field of permanent coloring or tattooing.

NOTE: The Division may request additional information to substantiate qualification if the tax return does not verify that the individual has been practicing permanent color or tattooing in an unregulated state.

Stat. Auth.: ORS 690.365, 690.405

Stats. Implemented: ORS 690.365, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0035; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-560-0000

Examination Authorization

(1) The Health Licensing Office will conduct examinations for licensure. A schedule of examination dates and times is available at the agency upon request. Applicants will not be eligible for an examination until all documentation and fee requirements have been completed.

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(2) The agency reserves the right to alter or adjust examination dates, times and locations as it deems necessary to meet emergency situations and will notify applicants and schools in advance whenever possible.

(3) Applicants shall be required to present photographic identification such as a driver's license and their original Social Security card at the time of the examination.

Stat. Auth.: ORS 690.370, 690.405

Stats. Implemented: ORS 690.370, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0075 & 333-305-0080; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-560-0010

Examination for Licensure

(1) Applicants for licensure must satisfactorily pass the written examination(s) that tests the applicant's knowledge of:

(a) Basic principles of safety, infection control and sterilization;

(b) Oregon laws and rules (including licensure requirements and regulations);

(c) Chemical use and storage;

(d) Diseases/disorders (skin, HIV, Hepatitis B, C and D viruses, communicable/transmittable);

(e) Equipment, supplies, tools and implements;

(f) Practice standards;

(g) Facility standards;

(h) Definitions.

(2) The examination shall consist of two sections as follows:

(a) 100 written multiple choice questions not to exceed one hour in duration; and

(b) 50 written skill assessment questions not to exceed one hour in duration.

(3) Examination candidates must achieve a 75 percent or higher score on each section to pass the written examination.

(4) The examination will be conducted in English.

(5) Applicants failing to successfully complete the examination process and attain licensure within two years from the date of the initial application or the most recent examination attempt, whichever is later, shall be required to:

(a) Reapply for examination according to OAR 331-555-0040;

(b) Pay the appropriate fees; and

(c) Retake examination.

Stat. Auth.: ORS 690.405, 690.410(3)(b))

Stats. Implemented: ORS 690.405, 690.410(3)(b))

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0070; HDLP 2-1999, f. & cert. ef. 7-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-560-0020

Special Examination Accommodations

(1) Applicants who have a learning, psychological, physical, or other disability, which requires an accommodation to the regular testing environment may request a special examination.

(2) Requests for accommodation shall be made on forms provided by the agency and shall contain supporting documentation completed by a licensed professional holding appropriate credentials qualified to certify that the applicant's disabling condition requires the requested test accommodation.

(3) A "Request for Accommodation" form must be submitted to the agency in advance of the scheduled examination date to make appropriate arrangements contingent upon the type of accommodation requested.

(4) All special examinations are conducted at the agency. If the agency is unable to accommodate the disability on-site special arrangements will be arranged for an adequate test site.

Stat. Auth.: ORS 690.370, 690.405

Stats. Implemented: ORS 690.370, 690.405

Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-560-0030

Examination Conduct; Disqualification

(1) Examinations are conducted in a designated area with restricted access. Authorization must be provided by the agency before bringing any material or electronic equipment or devices into the examination. Receiving or attempting to receive assistance during the examination, including assistance from other individuals, from notes books or devices or taking unauthorized items into the examination area shall invalidate the examination and result in forfeiture of the examination and fees.

(2) Examination Disqualification: A candidate may be immediately disqualified during or after the examination for conduct that interferes with the examination. Such conduct includes:

(a) Giving or receiving aid, directly or indirectly during the examination process;

(b) Obtaining help or information from notes, books, or other individuals to answer questions;

(c) Removing or attempting to remove any examination-related information, notes or materials from the examination site;

(d) Failing to follow directions relative to the conduct of the examination; and

(e) Exhibiting behavior that impedes the normal progress of the examination.

(3) Disqualification will invalidate the examination and result in forfeiture of the examination fees. The applicant will be required to reapply, submit additional examination fees and request in writing to schedule another examination. Reexamination will be scheduled at a date, time and place determined by the Director following the date of disqualification. Re-examination will be conducted at the agency.

Stat. Auth.: ORS 690.410

Stats. Implemented: ORS 690.410

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0090; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-560-0040

Notification of Examination Results

Examination results will be issued following completion of each examination section as part of the agency's automated testing system. Applicants taking examinations conducted under special accommodation will be mailed results within seven calendar days following the date of examination.

Stat. Auth.: ORS 676.615, 690.370, 690.405

Stats. Implemented: ORS 676.615, 690.370, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0095; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-560-0050

Examination Review

(1) Opportunity to review failed sections of the examination, conducted by use of the electronic touch screen computer testing system, are provided at the conclusion of each examination question/answer selection, or immediately following conclusion of the entire examination. Review of failed examination sections at a later time or date is prohibited.

(2) Applicants retaking the examination must present photographic identification such as a driver's license and their original Social Security card, as required by OAR 331-560-0000.

Stat. Auth.: ORS 676.615, 690.405

Stats. Implemented: ORS 676.615, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0100; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-560-0060

Retake of Examination Sections; Additional Training

(1) Failed sections of the examination may be retaken at the next available examination date and time, as scheduling allows. Retaking a failed examination requires registration and payment of the examination fees.

(2) Applicants who fail to pass any section of the written examination after three attempts (initial examination plus two retakes) shall be required to complete an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-555-0010(3), with emphasis on safety, infection control and sterilization, needles, machines, and equipment. Additional instruction must be obtained through an Oregon career school licensed under ORS 345.010 to 345.450.

(3) Prior to an applicant's fourth examination attempt, an official transcript must be received from an Oregon licensed career school which verifies that the applicant has satisfactorily completed the additional required hours of instruction.

Stat. Auth.: ORS 690.370, 690.405

Stats. Implemented: ORS 690.370, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0105 & 333-305-0110; HDLP 2-1999, f. & cert. ef. 7-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

ADMINISTRATIVE RULES

331-565-0000

License Issuance; Renewal

(1) Licensees are subject to the provisions of OAR 331-030-0010 regarding issuance and renewal of a license, and to the provisions of OAR 331-030-0020 regarding the authorization to practice, identification, and the requirements for issuance of a duplicate authorization.

(2) Renewal payments received by the agency, or postmarked, after the expiration date but within one year of expiration, will be assessed a late fee in addition to the annual renewal fee.

(3) A license which has been expired for more than one year, but less than three, shall be deemed suspended and may be reactivated by meeting renewal and continuing education requirements and payment of:

- (a) A suspended renewal fee for each year expired;
- (b) A reactivation fee; and
- (c) A renewal fee.

(4) Failure to meet continuing education requirements listed in OAR 331-570-0000 will require reapplication, submission of an application fee, examination fees and one-year licensee fee, and successfully passing all sections of the examination before a license will be reissued.

(5) Failure to renew or reactivate a license within three years from the date of expiration will require reapplication, submission of an application fee, examination fees and one-year licensee fee, and successfully passing all sections of the examination before a license will be reissued.

Stat. Auth.: ORS 690.385, 690.405

Stats. Implemented: ORS 690.385, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0115; HDLP 2-1999, f. & cert. ef. 7-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-565-0020

Facility License Issuance and Renewal; Cooperation in Inspections

All facilities must be licensed to provide permanent color and tattoo services prior to operating permanent color and tattoo facilities.

(1) The agency will issue a facility license to a qualified person, as provided in OAR 331-030-0010, if the applicant:

(a) Is at least 18 years of age, if the applicant is a natural person, as required in ORS 690.365(2). If the applicant is an entity other than a natural person, the entity must be formed and operated in accordance with Oregon law;

(b) Has registered with the Corporations Division and received an assumed business name prior to applying for a facility license (unless doing business under the full name of the owner);

(c) Applies on a form and with the information prescribed by the agency and pays the required application and license fees;

(d) Complies with all applicable rules and regulations;

(e) Certifies that application information is correct; and

(f) Meets the specifications for building, fire and plumbing codes as specified in OAR 331-580-0000 and complies with exit and fire standards established by the Building Codes Agency and Office of the State Fire Marshal.

(2) Facility license applicant must provide a map or direction to the business premises if the facility is located in a rural or isolated area, and submit a copy of the spore test results from applicant's autoclave, or submit a signed attestation requesting an exemption under OAR 331-585-0020(2) based on the exclusive use of prepackaged sterile tattooing equipment, including needles.

(3) A facility license holder must comply with the provisions of OAR 331-030-0010 regarding issuance and renewal of a facility license.

(4) Each facility license holder must:

(a) Allow the agency's enforcement officer to inspect the facility when it is open for business;

(b) Ensure employees cooperate with agency enforcement officers and refrain from impeding an inspection in any way;

(c) Contact the agency in writing to make arrangements for an inspection if the agency has been unable to perform an annual inspection because the facility was closed.

Stat. Auth.: ORS 676.615, 690.360, 690.405

Stats. Implemented: ORS 676.615, 690.360, 690.405

Hist.: HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0062; HDLP 2-1999, f. & cert. ef. 7-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-565-0025

Facility Located in Residence

A facility located in a residence must comply with the provisions of OAR 331-565-0020 in addition to the following criteria:

(1) Have an identifying house number or a sign, which is easily visible from the street and indicates the location of the facility;

(2) Be equipped with the structures, accommodations, and equipment which the agency requires for all facilities; and

(3) Have an entry that is separate from the entry to the living area of the home. The living area of the home shall be separated from the facility by solid walls extending from floor to ceiling, with any connecting doors kept closed while the facility is in actual operation.

Stat. Auth.: ORS 676.615, 690.360, 690.405

Stats. Implemented: ORS 690.390 & ORS 690.405

Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-565-0030

Facility License Requirements

(1) A facility shall meet the requirements for a new facility (refer to OAR 331-565-0020) and submit a new facility application and required fees when any of the following conditions exist:

(a) A facility is purchased from the current or previous owner, partnership or corporation. Facility licenses are not transferable from person-to-person or from business-to-business;

(b) There is a change in the legal ownership, partnership or holding of a facility regulated under ORS 690 and OAR 331, such as:

(A) A partner(s) or co-owner(s) is added; or

(B) A partner(s) or co-owner(s) is removed, including change in ownership status due to death of facility owner(s).

(c) An existing facility moves or relocates to a new physical address. Facility licenses are not transferable from location-to-location.

(2) Facility owners closing their facilities shall:

(a) Submit written notice to the agency within five business days of a facility closure, indicating whether the closure is permanent or of a temporary duration. Notice of temporary facility closure shall specify the anticipated date of resuming business operations;

(b) If notice of a permanent facility closure was submitted, and the license holder (same owner) reopens the facility while the license is still in renewable or active status, the facility owner shall submit notice to the agency prior to reopening the facility and resuming business operations/services.

Stat. Auth.: ORS 676.615, 690.360, 690.405

Stats. Implemented: ORS 676.615, 690.360, 690.405

Hist.: HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0062; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-565-0040

Display of License

All practitioner and facility licenses must be posted in public view.

Stat. Auth.: ORS 690.380

Stats. Implemented: ORS 690.380

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0140; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-565-0060

Practicing at Location Other Than Named Place(s) of Business

(1) Licensees shall not practice at any location other than the place or places of business listed with the agency. However, licensees may provide services outside the premises of a licensed facility on persons residing in a health care facility or persons confined to their residence through medical disability or restriction.

(2) All licensees who perform services at approved locations as listed in subsection (1) of this rule, or at more than one business location shall carry their license with them and post it while working.

Stat. Auth.: ORS 676.615, 690.390, 690.405(9)

Stats. Implemented: ORS 676.615, 690.390, 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0185; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-565-0075

Demonstration Permit

(1) "Demonstration permit" is an authorization pursuant to ORS 690.405 to practice on a limited basis for a maximum of 30 consecutive days.

(2) A person not licensed under ORS 690.365, who intends to demonstrate, teach or perform permanent coloring or tattooing services, temporarily for educational purposes or at artistic competitions, where services are not performed upon the public, must first obtain a demonstration permit from the agency.

(3) To be granted a demonstration permit a person must meet the following requirements:

(a) Submit an application on a form prescribed by the agency;

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(b) Provide satisfactory evidence of holding a valid license in their city, state, or country;

(c) Describe the purpose for which the permit is sought; and

(d) Pay the required application and permit fees.

(4) The demonstration permit will specify the period during which the person is permitted to demonstrate, teach or perform services.

Stat. Auth.: ORS 676.615, 690.405

Stats. Implemented: ORS 676.615, 690.405

Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-565-0080

Temporary Facility Permit

(1) "Temporary facility permit" is an authorization pursuant to ORS 690.405 to operate a facility on a limited basis, not to exceed 30 consecutive calendar days, at locations away from the primary facility, such as fairs, carnivals or bazaars.

(2) A person who intends to operate a facility on a limited basis away from a primary licensed facility must first obtain a temporary facility permit from the agency.

(3) To be granted a temporary facility permit, a person must meet the following requirements:

(a) Be 18 years of age or older, if the applicant is a natural person. If the applicant is an entity other than a natural person, the entity must be formed and operated in accordance with Oregon law;

(b) Apply on forms prescribed by the agency and provide the required information and application fees.

(4) A temporary facility must:

(a) Receive the permit and post the authorization in public view before opening for business;

(b) Comply with the rules of the agency concerning health, safety and infection control;

(c) Comply with the applicable health and safety laws and rules of the agency and any other state agencies;

(d) Pay the required permit fees.

(5) The temporary facility permit shall specify the period during which the permit is valid.

Stat. Auth.: ORS 676.615, 690.405

Stats. Implemented: ORS 676.615, 690.405

Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-570-0000

Continuing Education for License Renewal

To maintain licensure all permanent color technicians and tattoo artists must comply with the following continuing education requirements:

(1) Complete 15 clock hours of satisfactory continuing education, either as one unit or combination of units, not less than one hour each, every three years.

(2) Satisfactory continuing education courses must fit into the approved course of study outlined in OAR 331-555-0010, and must be obtained as follows:

(a) Participation or attendance at an instructional program presented, recognized, or under the auspices of any permanently organized institution, agency, or completion and certification by an approved national home study organization; or

(b) Self-study, participation, or attendance not covered by subsection (a) of this rule may comprise up to six hours of the total requirement. Self-study may include continuing education obtained by means of the following:

(A) Correspondence courses;

(B) Review of publications, textbooks, printed material, or audio cassette(s);

(C) Viewing of films, videos, or slides;

(c) Attendance at meetings of the Advisory Council for Electrologists and Permanent Color Technicians and Tattoo Artists may be credited for a maximum of three hours per meeting, totaling no more than six hours over three year reporting period.

(3) Licensees must report compliance with the continuing education requirement through attestation on the license renewal document. Licensees will be subject to the provisions of OAR 331-570-0020 pertaining to periodic audit of continuing education.

(4) Continuing education requirements apply whether the applicant renewing a license is living or working within Oregon or outside of the state as long as Oregon licensure is maintained.

(5) Hours of continuing education, in excess of the requirement for renewal every three years, will not be carried forward.

(6) Continuing education is required for renewal, every three years, even if the license has been inactive or suspended during that period.

(7) To ensure adequate evidence of attainment of required continuing education is available for audit or investigation by the agency, records of attendance must be maintained for two years following the three-year continuing education cycle and renewal of the permanent coloring and tattooing license.

(8) Licensees failing to obtain 15 clock hours of continuing education every three years must reapply and qualify according to the requirements of OAR 331-555-0040 and successfully pass a written examination.

Stat. Auth.: ORS 676.605, 676.615, 690.385

Stats. Implemented: ORS 676.605, 676.615, 690.385

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0125; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04, Renumbered from 331-570-0010

331-570-0020

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Health Licensing Office will audit a select percentage of licenses determined by the Council to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation must submit to the agency, within 30 calendar days from the date of notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-570-0000.

(3) Documentation of attendance at a program or course provided by the sponsor must include:

(a) Name of sponsoring institution/association or organization;

(b) Title of presentation and description of content;

(c) Name of instructor or presenter;

(d) Date of attendance and duration in hours;

(e) Course agenda;

(f) Official transcript, diploma, certificate, statement or affidavit from the sponsor, attesting to attendance.

(4) Documentation substantiating the completion of continuing education through self-study must show a direct relation to subjects outlined in OAR 331-555-0010, be submitted on forms provided by the agency and include the following:

(a) Name of sponsor or source, type of study, description of content, date of completion and duration in clock hours;

(b) Name of approved correspondence courses or national home study issues;

(c) Name of publications, textbooks, printed material or audiocassette's, including date of publication, publisher, and ISBN issued.

(d) Name of films, videos, or slides, including date of production, name of sponsor or producer and catalog number.

(5) If documentation of continuing education is invalid or incomplete, the licensee must correct the deficiency within 30 calendar days from the date of notice. Failure to correct the deficiency within the prescribed time shall constitute grounds for disciplinary action.

(6) Misrepresentation of continuing education, or failing to meet continuing education requirements or documentation may result in disciplinary action, which may include, but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth.: ORS 676.615, 690.405

Stats. Implemented: ORS 676.615, 690.405

Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-575-0010

Practice Standards; Restrictions

(1) Licensees shall keep an individual record of each client. That record shall include the name, date of birth and address of the client, and the date and duration of each service, type of service, special instructions, and medical history or client conditions, including:

(a) Diabetes;

(b) Client sensitivities;

(c) Cold sores and fever blisters;

(d) Epilepsy;

(e) Heart conditions;

(f) Hemophilia;

(g) Hepatitis;

(h) Use of blood thinners;

(i) Moles or freckles at the site of service;

(j) Psoriasis or eczema;

(k) Pregnancy or breast-feeding/nursing;

(l) Scarring (keloid);

(m) Other medical or skin conditions.

(2) Licensees may obtain advice from physicians regarding medical information needed to safeguard client and technician or artist.

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(3) Records shall be kept for a minimum of two years.

(4) Pre-service information in written form shall be given to client to advise of possible reactions, side effects and potential complications of the tattooing process. Aftercare instructions shall be given to the client both verbally and in writing after every service.

(5) Before and after photographs shall be taken for medical tattooing procedures, and records maintained.

(6) Inks, dyes, or pigments shall be purchased from a commercial supplier or manufacturer. Products banned or restricted by the Food and Drug Administration shall not be used.

(7) Tattooing is prohibited:

(a) On a person who is inebriated or appears to be incapacitated by the use of alcohol or drugs;

(b) On persons who show signs of intravenous drug use;

(c) On persons with sunburn or other skin diseases or disorders such as open lesions, rashes, wounds, puncture marks in areas of treatment;

(d) On persons under 18 years of age, regardless of parental or legal guardian consent, except when authorized or prescribed by a physician's statement exclusively for medical repigmentation as defined in OAR 331-550-0000(8).

(8) Proof of age must be documented in the client's record by one of the following:

(A) Copy of current government issued photographic identification;

or

(B) Notation of the type of current government issued photographic identification presented with the identification number.

Stat. Auth.: ORS 676.605, 676.615, 690.390, 690.405(9)

Stats. Implemented: ORS 676.605, 676.615, 690.390, 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0150; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-575-0020

Permanent Color and Tattoo Procedures; Preparation and Aftercare

(1) During preparation, performance of service, and aftercare phases all substances shall be dispensed from containers in a manner to prevent contamination of the unused portion (refer to OAR 331-585-0000). Use of spray bottle to apply liquid to skin is acceptable. Single use tubes or containers and applicators shall be discarded following tattoo service.

(2) The client's skin shall be cleansed, excluding the areas surrounding the eyes, by washing with a Food and Drug Administration (FDA) germicidal solution applied with a clean single-use paper product before placing the design on the client's skin or beginning tattooing work.

(3) If the area is to be shaved, the licensee shall use a single use disposable safety razor or sterilized straight-edged razor, and then rewash client's skin.

(4) Substances applied to client's skin to transfer design from stencil or paper shall be single use. Paper stencils and skin scribes shall be single-use and disposed of immediately following service.

(5) Body pencils used during a tattoo service shall have the tip removed, the body and tip of pen disinfected, and the tip sharpened to remove exposed edge after use on a client and prior to use on another client.

(6) The plastic or acetate stencil used to transfer the design to the client's skin shall be thoroughly cleansed and rinsed in an Environmental Protection Agency (EPA) approved high-level disinfectant according to the manufacturers instructions and then dried with a clean single-use paper product.

(7) Individual portions of inks, dyes, or pigments in clean single-use containers shall be used for each client. Any remaining unused dye or pigments shall be discarded immediately following service.

(8) Excess ink, dye, or pigment applied to the client's skin shall be removed with clean single-use paper product obtained from a self-dispensing container.

(9) Use of styptic pencils or alum solids to check any blood flow is prohibited.

(10) Upon completion of tattooing, the skin shall be cleansed, excluding the area surrounding the eyes, with a clean single-use paper product saturated with an (FDA) approved germicidal solution.

(11) A sanitary covering shall be placed if appropriate or over large designs and adhered to the skin with suitable skin tape. The use of any clear plastic wrap for covering tattoos is prohibited.

(12) Aftercare shall consist of both verbal and written instructions concerning proper care of the tattooed skin. Instructions shall specify:

(a) Care following service;

(b) Possible side affects; and

(c) Restrictions.

Stat. Auth.: ORS 676.605, 676.615, 690.390

Stats. Implemented: ORS 676.605, 676.615, 690.390

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0252; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-575-0030

Handwashing/Protective Gloves; Handling Disposable Materials

(1) **HAND WASHING:** Permanent color technicians and tattoo artists shall observe and adhere to the following hand washing standards when serving clients:

(a) Hands must be washed before and after treatment of each client and before putting on gloves and immediately after gloves are removed;

(b) Thorough hand washing shall be by use of soap and water or other alternative hand washing product, such as jell, aerosol spray, foam, or pre-packaged hand wipes, immediately before and after serving each client as needed. Use of bar soap is prohibited;

(2) **PROTECTIVE GLOVES:** Permanent color technicians and tattoo artists shall observe and adhere to the following protective glove standards when serving clients:

(a) A new pair of disposable gloves must be worn during the treatment of each client;

(b) Hands must be washed in accordance with the hand washing standards stated in subsection (1) of this rule before putting on gloves and immediately after gloves are removed;

(c) If a practitioner uses low-powdered gloves, the excess exterior powder must be removed to prevent powder contact with the client's skin during treatment;

(d) When a treatment session is interrupted:

(A) A protective covering must be used over the gloved hand/ hands;

or

(B) Gloves must be removed and discarded.

(e) When gloves are removed during a treatment session, hands must be washed and a fresh pair of gloves used;

(f) Torn or perforated gloves must be removed immediately, and hands must be washed after gloves are removed.

(3) **DISPOSABLE MATERIALS:** Permanent color technicians and tattoo artists shall observe and adhere to the following disposable material standards when serving clients:

(a) All waste materials related to treatment shall be disposed of in a covered container after each client service;

(b) Disposable materials in contact with blood and/or body fluids shall be placed in a sealable plastic bag, separate from sealable trash or garbage liners, and then disposed of in a covered container;

(c) Disposable sharp objects in contact with blood and/or body fluids shall be disposed of in an appropriate "sharps container" as defined in OAR 331-505-0000(32);

(d) Permanent color technicians or tattoo artists shall have both sealable plastic bags and sealable rigid containers available at the facility.

(4) The client's skin shall be cleansed by applying an antiseptic or antibacterial solution prior to and following treatment.

Stat. Auth.: ORS 676.605, 676.615, 690.390, 690.405

Stats. Implemented: ORS 676.605, 676.615, 690.390, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0210, 333-305-0215 & 333-305-0235; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-575-0040

Communicable and Blood Borne Diseases

A licensee providing service or working in a facility while diagnosed with having acquired an immunodeficiency virus and related immunodeficiency conditions or the Hepatitis viruses (B, C and/or D) shall observe and follow all current Centers for Disease Control (CDC) standards for public service workers regarding personal protection equipment and disposal of blood or bodily fluid contaminated articles, tools and equipment. This includes practitioners or employees providing services to clients who have been diagnosed with having an immunodeficiency virus, related conditions or the Hepatitis viruses (B, C and/or D).

NOTE: It is the position of the Division that human immunodeficiency virus (HIV) is the cause of acquired immunodeficiency syndrome (AIDS) and related immunodeficiency conditions. This virus, as well as Hepatitis B Virus (HBV), Hepatitis C virus (HCV) and Hepatitis D virus (HDV), may be transmitted by sharp instruments contaminated by blood or other body fluids, if standard precautions are not followed. As the carriers of these viruses may have no symptoms, the most prudent course to follow is to treat body fluids from all persons with the same high standards of caution and to rigorously follow established safety and sanitation practices as required by the law and rules of the Division. There is no published evidence to support casual transmission of HIV, by sneezing or touching, even in close household settings involving AIDS patients and family members caring for them at home. Because HIV is not spread by casual means and because of the inadequacies of the HIV antibody test, there is no reason for the Division to require blood tests prior to licensure. Good hand

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washing after glove removal and between each client is imperative and the most important procedure for prevention of all infections, including HIV. Uniform body fluid precautions are ample to prevent transmission of HIV, HBV, HCV and/or HDV in a facility setting.

Stat. Auth.: ORS 676.605, 676.615, 690.390

Stats. Implemented: ORS 676.605, 676.615, 690.390

Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-580-0000

Compliance with all Applicable Regulations

(1) Licensees and facility owners shall observe all applicable state regulations pertaining to public health and safety. Compliance with building, state fire, plumbing, and electrical regulations is required.

(2) In addition, when an employee/employer relationship exists, practitioners shall comply with ORS 654 and the Oregon Safe Employment Act.

(3) Permanent color technicians and tattoo artists shall observe and adhere with all Oregon Occupational Safety & Health Codes (OR-OSHA), OAR 437 and 29 CFR 1910.1030 Bloodborne Pathogens.

(4) Every permanent color and tattoo facility shall have a written Exposure Control Plan. All procedures developed for the facility's exposure control plan shall be in compliance with OSHA state and federal regulations and with current Centers for Disease Control (CDC) standards for public service workers.

(5) Only authorized equipment or products may be utilized, and in addition, must only be used in a manner approved by manufacturers and appropriate regulatory agencies.

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

Stat. Auth.: ORS 654, 676.605, 676.615, 690.390

Stats. Implemented: ORS 654, 676.605, 676.615, 690.390

Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-580-0010

Criteria for Facilities

(1) All facilities shall have a treatment area/operatory that is separate, private, or screened from the entrance, waiting area, and/or other treatment areas.

(2) Facilities shall be kept clean and orderly, and equipment shall be maintained in good repair.

(3) All surfaces (counters, tables, equipment, client chairs or recliners) in treatment and sterilization areas shall be made of smooth, non-absorbent and non-porous material.

(4) All floors and walls shall be easily cleanable. Floors and walls in the treatment area shall be made of smooth, non-absorbent and non-porous material. Concrete blocks or other masonry used in wall construction shall be covered or made smooth and sealed for a washable surface.

(5) A high-level disinfectant or bleach solution, used according to the manufacturer's instructions, shall be used to disinfect surfaces contaminated by blood or bodily fluids.

(6) Pets or other animals shall not be permitted in the business facility. This prohibition does not apply to therapy animals, trained guide animals for the disabled, sightless or hearing impaired, fish in aquariums or to nonpoisonous reptiles in terrariums.

(7) Tattoo services provided in beauty facilities shall be separated by a permanent, solid barrier from hair design and nail technology services in such a manner as to prevent contact with irritants including but not limited to hair spray and nail dust.

Stat. Auth.: ORS 676.605, 676.615, 690.390, 690.405(9)

Stats. Implemented: ORS 676.605, 676.615, 690.390, 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0165, 333-305-0175 & 333-305-0180; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-580-0020

Water Supply Requirements and Standards

(1) The quality and construction of facility water supplies shall meet the requirements of ORS Chapter 448, the State Plumbing Code, OAR 437 and 918, Division 750.

(2) Facility water supplies shall have a minimum of 20 pounds pressure per square inch in accordance with the State Plumbing code.

(3) All facilities shall have immediate access to an adequate supply of both hot and cold running water and wash basins on the facility premises or as part of surrounding premises or adjacent to the facility. Sinks located in the restroom do not qualify as a water source for the facility premises.

(4) Waste from toilets or lavatories discharged directly into a public sewer or by a method meeting the requirements of ORS 454.

(5) Hand washing accommodations shall be provided in work areas where employees are exposed to hazardous materials, which may have a harmful effect on or be absorbed through the skin.

(6) Washing accommodations shall be maintained in a clean and sanitary condition.

Stat. Auth.: ORS 448, 654, 676.605, 676.615, 690.390, 690.405(9)

Stats. Implemented: ORS 448, 654, 676.605, 676.615, 690.390, 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0165; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-580-0030

Compliance with Indoor Clean Air Act

Any public place in a facility shall be governed under the Oregon Indoor Clean Air Act as it appears in ORS 433.835 through 433.875.

Stat. Auth.: ORS 676.615, 690.390 & ORS 690.405(9)

Stats. Implemented: ORS 433.835 - 433.875, 676.615, 690.390, 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0170; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-585-0000

Cleaning Requirements and Standards

(1) All items that come in direct contact with the client's skin that do not require disinfecting shall be clean.

(2) All items that come in direct contact with the client's skin that cannot be cleaned or disinfected shall be disposed of in a covered waste receptacle immediately after use.

(3) All substances used in the practice of permanent color technicians and tattoo artists shall be dispensed from containers in a manner to prevent contamination of the unused portion.

(4) All disinfecting solutions and/or agents shall be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business.

(5) The agency shall authorize the use of disinfecting agents provided those agents are EPA registered and meet the criteria set forth in OAR 331-505-0000(12) and (15).

Stat. Auth.: ORS 676.605, 676.615, 690.390, 690.405

Stats. Implemented: ORS 676.605, 676.615, 690.390, 690.405

Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-585-0010

Instrument Cleaning; Sterilization Standards

(1) Prior to sterilizing, instruments shall be brushed and/or swabbed to remove foreign material or debris, rinsed and then cleaned by one of the following approved methods:

(a) Immersing in detergent and water in an ultra sonic unit that operates at 40 to 60 hertz, followed by a thorough rinsing and wiping; or

(b) Submerging and soaking in a protein dissolving detergent/enzyme cleaner, followed by a thorough rinsing and wiping.

(2) Instruments or other equipment which are "heat-sensitive" shall be disinfected by complete immersion of the object(s) or portion(s) thereof to be disinfected, in an high-level disinfectant which has demonstrated tuberculocidal activity, and used according to the manufacturer's instructions.

(3) Cleaned instruments used in the practice of permanent coloring and tattooing shall be placed in sterile bags or containers with color strip indicators, sterilized by exposure to one cycle of an approved sterilizer listed in OAR 331-585-0020, and handled with sterile transfer equipment during placement into sterile bags or containers.

Stat. Auth.: ORS 676.605, 676.615, 690.390, 690.405

Stats. Implemented: ORS 676.605, 676.615, 690.390, 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0200 & 333-305-0205; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-585-0020

Approved Sterilization Modes

(1) Licensees must sterilize instruments used in the practice of permanent coloring or tattooing by means of an approved sterilizing device registered and listed with the U.S. Food and Drug Administration, used, cleaned and maintained in accordance with the manufacturer's instructions. Approved sterilizing devices include an autoclave (steam or chemical) or dry heat unit.

(2) In lieu of sterilization methods listed in (1) above, a licensee may use single-use, prepackaged, sterilized equipment, obtained from commercial suppliers or manufacturers.

(3) Sterilizing devices shall be tested during each sterilizing cycle by means of a commercial test mechanism, such as but not limited to color strip indicators to measure temperature control and general functioning of the equipment.

(4) Sterilizing devices shall be tested at least quarterly for functionality and thorough sterilization by using a commercial biological monitoring

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(spore) system to assure all microorganisms, including spores, have been destroyed.

(5) Biological test results must be on laboratory letterhead and must contain the test date, and the name, model and serial number of the unit tested. Biological test results shall be retained for a two-year period and must be available for inspection at all times.

Stat. Auth.: ORS 676.605, 676.615, 690.390, 690.405
Stats. Implemented: ORS 676.605, 676.615, 690.390, 690.405
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0195; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-590-0000

Investigative Authority

The Health Licensing Office may initiate and conduct investigations of matters relating to the practice of electrolysis, permanent coloring or tattooing, pursuant to ORS 676.608 and 676.618, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and 690.407.

Stat. Auth.: ORS 676.608, 676.618, 690.405, 690.407
Stats. Implemented: ORS 676.608, 676.618, 690.405, 690.407
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0255; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

331-590-0020

Schedule of Penalties for Licensing Violations; Violation of Standards

The Health Licensing Office has adopted the following presumptive penalty schedule for the first and second violations of the following laws and rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For subsequent violations the provisions of OAR 331-020-0060 will apply.

(1) Practicing or holding one's self out as available to practice, or using the title permanent color technician or tattoo artist without first receiving a current, valid practitioner and/or facility license is a violation of ORS 690.355 and OAR 331-030-0020(1)(f) and may incur a penalty of \$1,000.

(2) Practicing or holding one's self out as available to practice, or using the title permanent color technician or tattoo artist with an expired or suspended practitioner and/or facility license is a violation of ORS 676.612(4) or 690.355 and may incur a penalty of \$1,000.

(3) Failing to post a current, valid license in public view is a violation of OAR 331-525-0020 and may incur a penalty of \$200.

(4) Failing to provide appropriate photographic identification upon request by the agency is a violation of ORS 676.612(1)(o) and OAR 332-030-0020(4) and may incur a penalty of \$1,000.

(5) Failing to submit changes of required licensing information within time frame set in rule is a violation of OAR 331-010-0040(1) and (2) and may incur a penalty of \$50.

(6) Practicing at location other than places of businesses designated to the agency, except as permitted by rule is a violation of OAR 331-565-0060(1) and may incur a penalty of \$500.

(7) Using a reproduction of a license in place of an original is a violation of OAR 331-030-0020(3) and may incur a penalty of \$50.

(8) Failing to allow inspection of the premises by the agency upon request is a violation of ORS 676.612(1)(o), OAR 331-020-0070(2)(d) and/or 331-565-0020(4) and may incur a penalty of \$1,000.

(9) Failing to meet the facility or practice standards adopted by the agency is a violation of ORS 676.612(1)(j), 690.390(1) and OAR 331-580-0000(1) and may incur a penalty of \$500.

(10) Failing to provide a private or separate treatment area for clients is a violation of OAR 331-580-0010(1) and may incur a penalty of \$100.

(11) Except as provided by rule, allowing animals in the facility is a violation of OAR 331-580-0010(6) and may incur a penalty of \$100.

(12) Failing to maintain the required equipment or have approved test indicators at facility is a violation of ORS 690.390(2) and OAR 331-575-0000 and may incur a penalty of: \$500 and/or suspension or revocation.

(13) Failing to use approved test indicators or mechanism as required to ensure proper sterilization is a violation of ORS 690.390(1) and OAR 331-585-0020(3), (4) and/or (5) and may incur a penalty of \$500.

(14) Failing to sterilize instruments using an approved mode is a violation of ORS 690.390(1) and (2), OAR 331-585-0020(1) and/or (2) and may incur a penalty of \$1,000.

(15) Failing to meet sterilization standards is a violation of ORS 690.390(1) and (2) and OAR 331-585-0010(2) and/or (3) and may incur a penalty of \$1,000.

(16) Failing to clean instruments prior to sterilization is a violation of OAR 331-585-0010(1) and may incur a penalty of \$1,000.

(17) Failing to wash hands before and after treatment and/or wear protective gloves is a violation of OAR 331-575-0030(1) and/or (2) and may incur a penalty of \$500.

(18) Failing to prepare treatment area on a client in accordance with agency standards is a violation of OAR 331-575-0030(4) and may incur a penalty of \$500.

(19) Failing to meet cleanliness and/or storage standards for linens is a violation of OAR 331-575-0050 and may incur a penalty of \$500.

(20) Failing to meet storage requirements for instruments, products or chemicals is a violation of OAR 331-585-0030 and may incur a penalty of \$500.

(21) Failing to dispose of materials contaminated with blood or bodily fluids in a sealable container or appropriate sharps container, or failing to have appropriate containers available is a violation of OAR 331-575-0030(3) and may incur a penalty of \$1,000.

(22) Failing to have required covered waste receptacles is a violation of ORS 690.390(3) and OAR 331-585-0040(1) and may incur a penalty of \$100.

(23) Performing a restricted treatment is a violation of ORS 676.612(1)(j) and OAR 331-575-0010(7) and may incur a penalty of \$1,000.

(24) Failing to have and maintain client case history records is a violation of ORS 690.390(3) and OAR 331-575-0010(1), (2), (3), (4) and/or (5) and may incur a penalty of \$500.

Stat. Auth.: ORS 676.605, 676.615, 690.407
Stats. Implemented: ORS 676.605, 676.615, 690.407
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0265; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04

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Adm. Order No.: HLO 6-2004

Filed with Sec. of State: 6-29-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 4-1-04

Rules Adopted: 331-630-0010, 331-650-0000

Rules Transferred: 333-025-0000 to 331-601-0000, 333-025-0005 to 331-601-0010, 333-025-0002(5)-(9) to 331-610-0000, 333-025-0008 to 331-610-0010, 333-025-0007(5)-(10) to 331-610-0020, 333-025-0007 to 331-610-0030, 333-025-0004(1)-(10) to 331-610-0040, 333-025-0004(11)-(13) to 331-610-0050, 333-025-0002 to 331-620-0000, 333-025-0006 to 331-620-0010, 333-025-0009 to 331-620-0020, 333-025-0040 to 331-630-0000, 333-025-0050 to 331-640-0000, 333-025-0014 to 331-640-0010, 333-025-0027 to 331-640-0020, 333-025-0065 to 331-640-0030, 333-025-0029 to 331-640-0040, 333-025-0012 to 331-640-0050, 333-025-0075 to 331-650-0010

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

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

331-601-0000

Definitions

The following definitions apply to OAR 331-610-0000 through 331-650-0010.

(1) "Advisory Council" means, pursuant to ORS 694.165, the entity that advises the agency in matters relating the practice of hearing aid dispensing in accordance with ORS 694.170. The agency director controls the regulatory operations and has decision-making authority on all substantive matters.

(2) "Agency" means the Health Licensing Office. The agency is responsible for the budget, personnel, performance-based outcomes, con-

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sumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(3) "Application" means an original document provided by the agency, bearing an original signature of the applicant.

(4) "Application fee" means fee for processing application or reapplication for licensure, including administering an examination.

(5) "Assistive listening device" means a device that may meet the statutory definition of a hearing aid but has been determined by the agency not to be a hearing aid for the purposes of ORS 694 and OAR 331, Divisions 610 through 650.

(6) "Audiologist" means a person licensed under ORS 681 and who practices audiology as defined by that statute.

(7) "Consummation of sale" means when the purchaser takes delivery or possession of the hearing aid after agreeing to purchase the hearing aid.

(8) "Demonstration instrument" means a hearing aid that has been worn by a prospective user as part of a bona fide hearing aid evaluation conducted in the presence of the hearing aid specialist.

(9) "Delivery" means, as used in ORS 694.042(2), acceptance and possession of the hearing aids by the consumer, which starts the 30 calendar day rescission right period. Hearing aids that have been out of the consumer's possession for a period of 72 hours or more for any alternation or adjustment during the 30 calendar day rescission right period restarts the 30 calendar day rescission right period. Delivery includes:

(a) The initial fitting and delivery of the hearing aid(s) must be performed in person by a licensed hearing aid specialist, including the acceptance and possession of the hearing aid(s);

(b) Return of hearing aid by the consumer to the specialist may be hand carried or mailed by certified mail to the official place of business of the hearing aid specialist.

(10) "Direct supervision" means the supervisor is present in the facility for the purpose of supervising and in view the procedures performed by a registered trainee who has not completed the training requirements stated in OAR 331-610-0010.

(11) "Director" means the individual who is responsible for the performance of the agency as defined in ORS 676.610. The director appoints all subordinate officers and employees to carry out the duties of the agency.

(12) "Equivalent" means comparable but not identical, covering the same subject matter.

(13) "Facility" means physical place of business where services defined in ORS 694.015(4) are conducted, including but not limited to all areas used by hearing aid dealer specialist and client, i.e. testing location, waiting/reception area.

(14) "Health Licensing Office" means the agency.

(15) "Hearing aid" as defined in ORS 694.015(3) does not mean assistive listening devices as set forth in OAR 331-640-0000.

(16) "High level disinfectant" means a chemical agent, which has demonstrated tuberculocidal activity.

(17) "Indirect supervision" means the supervisor is not required to be on the premises while the procedures are performed by a temporary hearing aid specialist.

(18) "Licensed" means the authority to practice pursuant to ORS 694.025, which has not been revoked or expired without renewal.

(19) "Place or places of business" means the name, mailing address, telephone number and location where the licensee deals in hearing aids.

(20) "Probation" means continuation of licensure under conditions set by the agency.

(21) "Public view" means open to view and easy for the public to see.

(22) "Purchase price" means:

(a) The total amount paid or agreed to be paid by or on behalf of the consumer includes the cost of the hearing aid(s) and related professional fees.

(b) Professional fees shall include fees charged for the actual fitting and sale of the hearing aid(s):

(A) The evaluation or measurement of the powers or range of human hearing as they relate to hearing aid fitting;

(B) Hearing aid evaluation;

(C) Hearing aid consultation;

(D) Hearing aid recommendation;

(E) Hearing aid selection;

(F) Hearing aid fitting and dispensing;

(G) Adaptation of a hearing aid, if related to the original purchase;

(H) Counseling, if related to the original purchase and done by the person dealing in hearing aids and/or company, firm or facility involved in dispensing of the original hearing aid, and any other fees for service which are charged in regards to a hearing aid being fitted as a therapeutic device;

(I) Ear impression and ear molds.

(c) Professional fees charged for diagnostic testing for medical use when done by a physician or on a physician's order shall be excluded from this definition of professional fees.

(23) "Reconditioned" means a used hearing aid that has been rebuilt or is a hearing aid that consists of both old and new parts.

(24) "Renew" means to extend a current license for a year beyond expiration or to bring an inactive license to current, active status.

(25) "Used hearing aid" means any hearing aid that has been worn for any period of time, except where the hearing aid is defined as a demonstration instrument in OAR 331-601-0000(8).

(26) "Temporary hearing aid specialist" means an individual who has applied for and received a provisional license to work under the supervision of a licensed hearing aid specialist.

Stat. Auth.: ORS 676.615, 694.155, 694.170

Stats. Implemented: ORS 676.615, 694.155, 694.170

Hist.: HD 12, f. 4-20-72, ef. 5-1-72; HD 13-1984, f. & ef. 6-28-84; Renumbered from 333-025-0025; HD 8-1986, f. & ef. 5-29-86; HD 11-1987, f. & ef. 7-28-87; HD 8-1990, f. 4-4-90, cert. ef. 4-5-90; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94; HD 18-1997, f. 12-12-97, cert. ef. 12-15-97; Renumbered from 333-025-0000; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-601-0010

Fees

(1) Applicants and licensees are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Health Licensing Office are as follows:

(a) Application: \$50;

(b) Trainee application and registration, one-time fee: \$50;

(c) Initial examination, written and practical segments: \$300;

(d) Examination retake, written segment: \$150;

(e) Examination retake, practical segment: \$150;

(f) Examination as an Oregon licensed audiologist: \$30;

(g) Initial license and renewal: \$200;

(h) Delinquency or late renewal of license: \$10 per year in expired status;

(j) Temporary license: \$50;

(j) Replacement license: \$10

Stat. Auth.: ORS 676.605, 676.615, 694.155, 694.185

Stats. Implemented: ORS 676.605, 676.615, 694.155, 694.185

Hist.: HD 24-1985(Temp), f. & ef. 10-17-85; HD 33-1985, f. & ef. 12-13-85; HD 8-1990, f. 4-4-90, cert. ef. 4-5-90; HD 14-1990, f. 6-1-90, cert. ef. 7-1-90; HD 17-1990(Temp), f. 6-15-90, cert. ef. 7-1-90; HD 21-1990(Temp), f. & cert. ef. 7-3-90; HD 22-1990, f. & cert. ef. 8-15-90; HD 14-1991(Temp), f. 9-30-91, cert. ef. 10-1-91; HD 21-1991, f. & cert. ef. 12-31-91; HD 18-1997, f. 12-12-97, cert. ef. 12-15-97; OHD 9-1999, f. & cert. ef. 11-15-99; OHD 10-2000, f. & cert. ef. 11-15-00; Renumbered from 333-025-0005; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-610-0000

Qualification Pathways

To obtain an Oregon hearing aid specialist license, a person must provide completed application documentation prescribed by the agency pursuant to OAR 331-030-0000 and 331-620-0000, provide satisfactory evidence of meeting certification requirements, which includes qualifying criteria listed in one of the following certification pathways, and submit payment of all required fees.

(1) **TRAINEE REGISTRATION:** An applicant for trainee registration must submit a completed Training Registration Agreement, Declaration of Responsibility required by ORS 694.065(2), and complete core competencies pursuant to OAR 331-610-0010. Documentation must be submitted on agency prescribed forms.

(2) **AUDIOLOGIST:** An applicant must submit a copy of an Oregon state audiologist license, copy of American Speech and Hearing Association certification in audiology, or copy of official transcripts from an accredited training program in audiology.

(3) **OUT-OF-STATE LICENSURE:** An applicant must provide documentation, in the form of an Affidavit of Licensure, submitted directly to the agency from the originating state's regulatory office, evidencing that the applicant currently holds or held a hearing aid specialist license within three years immediately prior to the application date and that the licensee has not been subject to disciplinary action involving suspension or revocation, or no action is currently pending against the licensee, and no civil penalties are outstanding against the licensee.

(4) **QUALIFYING CREDENTIALS:** An applicant must provide documentation evidencing qualification for examination and licensure as a hearing aid specialist. Such documentation may include a copy of certification by the American Board of Otolaryngology, a physician's license showing American Board of Otolaryngology certification, or, a copy of cer-

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tification from the National Board for Certification in Hearing Instrument Sciences.

Stat. Auth.: ORS 676.605, 676.615, 694.065, 694.155, 694.170
Stats. Implemented: ORS 676.605, 676.615, 694.065, 694.155, 694.170
Hist.: Hist.: HD 24-1985(Temp), f. & ef. 10-17-85; HD 33-1985, f. & ef. 12-13-85; HD 8-1990, f. 4-4-90, cert. ef. 4-5-90; HD 14-1990, f. 6-1-90, cert. ef. 7-1-90; HD 17-1990(Temp), f. 6-15-90, cert. ef. 7-1-90; HD 21-1990(Temp), f. & cert. ef. 7-3-90; HD 22-1990, f. & cert. ef. 8-15-90; HD 14-1991(Temp), f. 9-30-91, cert. ef. 10-1-91; HD 21-1991, f. & cert. ef. 12-31-91; HD 18-1997, f. 12-12-97, cert. ef. 12-15-97; OHD 9-1999, f. & cert. ef. 11-15-99; OHD 10-2000, f. & cert. ef. 11-15-00; Renumbered from 333-025-0005(5)-(9); HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-610-0010

Training and/or Experience Requirements

To be approved by the agency, a hearing aid specialist training program must include at least 62 hours of theory and 98 hours of practical experience which must include at least 30 completed procedures covering all of the requirements for audiometric testing, earmold impressions, hearing aid selection, fitting and follow up care, and infection control and cleanliness. A training program must include the following core competencies for hearing aid fitting:

- (1) Basic Knowledge — Theory Hours 15;
 - (a) General principals of acoustics and hearing/speech acoustics;
 - (b) Conductive and sensory-neural disorders of hearing;
 - (c) The human ear: external, middle, and inner;
 - (d) Applicable Oregon Revised Statutes and Oregon Administrative

Rules;

- (2) Hearing aid standards — Theory Hours 15;
 - (a) American National Standards Institute;
 - (b) Food and Drug Administration;
 - (3) Audiometric Testing — Theory Hours 10, Practical Hours 35;
 - (a) Basic equipment check; adequate test environment;
 - (b) Otoscope technique/client management;
 - (c) Puretone audiometry; air conduction and bone conduction and recording audiograms;
 - (d) Masking: air conduction and bone conduction;
 - (e) Speech reception threshold;
 - (f) Most comfortable loudness level;
 - (g) Uncomfortable loudness level;
 - (h) Speech audiometry;
 - (4) Earmold impressions — Theory Hours 5, Practical Hours 15;
 - (a) Instructions to client;
 - (b) Otoscopic inspection;
 - (c) Dam placement and verification;
 - (d) Impression material preparation and insertion;
 - (e) Impression removal and evaluation;
 - (f) Impression handling and preparation for transport;
 - (5) Hearing aid selection, fitting and follow up care - Theory Hours

15, Practical Hours 45;

- (a) Acoustic couplers;
- (b) Hearing aid components;
- (c) Physical characteristics of hearing aids;
- (d) Electro-acoustic characteristics of hearing aids;
- (e) Problem solving;
- (f) Hearing aid modification and adaptation;
- (g) Basic hearing aid repair;
- (6) Infection control and cleanliness — Theory Hours 2, Practical

Hours 3;

- (a) Disinfection;
- (b) Single use disposable items;
- (c) Hand washing.

Stat. Auth.: ORS 676.615, 694.065, 694.155, 694.170
Stats. Implemented: ORS 676.615, 694.065, 694.155, 694.170
Hist.: HD 8-1986, f. & ef. 5-29-86; HD 8-1990, f. 4-4-90, cert. ef. 4-5-90; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94; HD 18-1997, f.12-12-97, cert. ef. 12-15-97; Renumbered from 333-025-0008; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-610-0020

Trainee Registration

(1) A trainee, registered under ORS 694.065(1) may deal in hearing aids under the direct supervision of a designated supervisor except that a trainee may not fit or sell hearing aids.

(2) The agency will authorize an Oregon licensed hearing aid specialist to act as designated supervisor of a trainee provided the licensee holds a valid license, has been actively practicing for at least three years, and has not had any disciplinary action or civil penalty imposed by the agency.

(3) A licensed hearing aid specialist must not supervise more than four trainees at any one time.

(4) A designated supervisor will not provide training as outlined in OAR 331-610-0010 until a trainee registration agreement and Declaration Of Responsibility has been submitted to the agency.

(5) A designated supervisor must notify the agency in writing within five calendar days if the trainee is no longer being supervised and trained, and must provide a Certification of Training form to the agency showing the number of hours of training completed.

(6) A designated supervisor's authorization may be withdrawn for providing incomplete or inadequate training, falsifying documentation, or allowing the trainee to fit or sell hearing aids.

Stat. Auth.: ORS 676.615, 694.155, 694.095, 694.170
Stats. Implemented: ORS 676.615, 694.155, 694.095, 694.170
Hist.: HD 13-1984, f. & ef. 6-28-84; HD 8-1986, f. & ef. 5-29-86; HD 8-1990, f. 4-4-90, cert. ef. 4-5-90; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94; HD 18-1997, f. 12-12-97, cert. ef. 12-15-97; Renumbered from 333-025-0007(5)-(10); HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-610-0030

Supervision of Temporary Hearing Aid Specialists

(1) An individual who holds a valid Oregon hearing aid specialist license who has been actively practicing for at least three years and has not had any disciplinary action or civil penalty imposed by the agency, may act as a designated supervisor for a temporary licensee. A Declaration of Responsibility form, prescribed by the agency, must be signed and filed with the agency before supervising any temporary hearing aid specialist. The form must indicate the name of the supervising hearing aid specialist, place of business, telephone number, current license number, and the name, address, and license number of the temporary hearing aid specialist.

(2) The testing, fitting, or selling of a hearing aid by a temporary hearing aid specialist shall be performed under the authority, control, and indirect supervision of the licensed hearing aid specialist designated as the supervisor. The designated supervisor must review and approve the temporary hearing aid specialist's work before ordering the recommended hearing aid(s).

(3) A designated supervisor shall exercise management, guidance, and control over the activities of the temporary hearing aid specialist; and shall exercise professional judgment and be responsible for all matters relative to the fitting and selling of a hearing aid.

(4) Approval of a temporary hearing aid specialist's work must be documented by the handwritten signature of the designated supervisor, license number, and date of review placed adjacent to the temporary hearing aid specialist's signature on any audiogram, order form, and office copy of a statement to a prospective hearing aid purchaser as required in ORS 694.036 and 694.042.

Stat. Auth.: ORS 676.615, 694.095, 694.155, 694.170
Stats. Implemented: ORS 676.615, 694.095, 694.155, 694.170
Hist.: HD 13-1984, f. & ef. 6-28-84; HD 8-1986, f. & ef. 5-29-86; HD 8-1990, f. 4-4-90, cert. ef. 4-5-90; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94; HD 18-1997, f. 12-12-97, cert. ef. 12-15-97; Renumbered from 333-025-0007; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-610-0040

Examination

(1) After the Health Licensing Office determines training and/or licensure qualifications have been met, applicants will be notified of their eligibility to take or schedule an examination. The examination consists of a written segment covering subjects set forth in ORS 694.075(1) and (3) and a practical or demonstration of skill segments pursuant to ORS 694.075(2).

(2) The written segment of the examination may be a national examination and will include questions covering Oregon law and rules regulating hearing aids.

(3) The examination shall be closed book, prepared and conducted in English.

(4) The practical segment of the examination consists of four sections: audiometric testing, masking, taking earmold impressions, and fitting hearing aids.

(5) Sections of both the written and practical segments of the examination shall be scored separately. The passing score for each section is 70% or above.

(6) Applicants, on initial examination, shall take all sections of both segments of the examination

(7) Applicants shall be mailed notification of the date, time and place of the examination at least 15 calendar days in advance.

(8) Applicants shall be required to provide photographic identification such as a driver's license, and their original Social Security card before being allowed entrance to the examination.

(9) Applicants failing the written segment of the examination shall be given information on examination appeal and/or rescoring procedures. Applicants shall initiate any request for rescoring of the written examina-

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tion with the agency within 30 calendar days from the date of the notification of the examination results.

(10) Notwithstanding subsections (1) through (9) of this rule, Oregon licensed audiologists will be required to take and pass only the Oregon laws and rules section of the written examination.

(11) Examinations are scheduled at a date and time established by the agency.

Stat. Auth.: ORS 676.605, 676.615, 694.065, 694.075, 694.155, 694.170
Stats. Implemented: ORS 676.605, 676.615, 694.065, 694.075, 694.155, 694.170
Hist.: HB 144, f. 6-27-60; HD 8-1986, f. & ef. 5-29-86; HD 8-1990, f. 4-4-90, cert. ef. 4-1-91; HD 27-1990(Temp), f. & cert. ef. 12-31-90; HD 3-1991, f. 3-15-91, cert. ef. 4-1-91; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94; HD 17-1994(Temp), f. & cert. ef. 6-15-94; HD 26-1994, f. 9-29-94, cert. ef. 10-1-94; HD 18-1997, f. 12-12-97, cert. ef. 12-15-97; Renumbered from 333-025-0004(1)-(10); HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-610-0050

Examination Conduct; Disqualification

(1) Examinations are conducted in a designated area with restricted access. Authorization must be provided by the agency before bringing any material or electronic equipment or devices into the examination. Receiving or attempting to receive assistance during the examination, including assistance from other individuals, from notes books or devices or taking unauthorized items into the examination area shall invalidate the examination and result in forfeiture of the examination and fees.

(2) Examination Disqualification: A candidate may be immediately disqualified during or after the examination for conduct that interferes with the examination. Such conduct includes:

(a) Giving or attempting to give assistance to others in answering questions during the examination;

(b) Receiving or attempting to receive assistance during the examination, including assistance from other individuals from notes, books or devices to answer questions;

(c) Removing or attempting to remove any secure examination-related information, notes, or materials from the examination site;

(d) Failing to follow directions relative to the conduct of the examination;

(e) Exhibiting behavior which impedes the normal progress of the examination; and

(f) Endangering the health or safety of a person involved in the examination.

(3) Disqualification will invalidate the examination and result in forfeiture of the examination and fees. The candidate will be required to reapply, submit additional examination fees, and request in writing to schedule another examination. Reexamination will be scheduled at a date, time and place determined by the Director following the date of disqualification.

Stat. Auth.: ORS 676.605, 676.615, 694.065, 694.155
Stats. Implemented: ORS 676.605, 676.615, 694.065, 694.155
Stat. Auth.: ORS 676.605, 676.615, 694.065, 694.075, 694.155, 694.170
Stats. Implemented: ORS 676.605, 676.615, 694.065, 694.075, 694.155, 694.170
Hist.: HB 144, f. 6-27-60; HD 8-1986, f. & ef. 5-29-86; HD 8-1990, f. 4-4-90, cert. ef. 4-1-91; HD 27-1990(Temp), f. & cert. ef. 12-31-90; HD 3-1991, f. 3-15-91, cert. ef. 4-1-91; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94; HD 17-1994(Temp), f. & cert. ef. 6-15-94; HD 26-1994, f. 9-29-94, cert. ef. 10-1-94; HD 18-1997, f. 12-12-97, cert. ef. 12-15-97; Renumbered from 333-025-0004(11)-(13); HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-620-0000

Application Requirements

(1) Individuals applying for licensure to practice as a Hearing Aid Specialist must meet the requirements of OAR 331-030-0000 and 331-030-0020, in addition to the remaining requirements of this rule.

(2) Applicants must submit an application form prescribed by the agency, which shall contain information listed in OAR 331-030-0000(5), be accompanied by payment of the appropriate fees, and include documentation evidencing completion of necessary training and/or licensure, according to one of the qualification pathways listed in OAR 331-610-0000(1) through (4).

(3) Application(s) for examination must be received by the agency at least 30 calendar days before the scheduled examination date, in order to be processed and eligible for examination.

Stat. Auth.: ORS 676.615, 694.055, 694.155
Stats. Implemented: ORS 676.615, 694.055, 694.155
Hist.: HB 144, f. 6-27-60; HD 13, 1984, f. & ef. 6-28-84; HD 8-1986, f. & ef. 5-29-86; HD 8-1990, f. 4-4-90, cert. ef. 4-1-91; HD 27-1990(Temp), f. & cert. ef. 12-31-90; HD 3-1991, f. 3-15-91, cert. ef. 4-1-91; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94; HD 18-1997, f. 12-12-97, cert. ef. 12-15-97; Renumbered from 333-025-0002; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-620-0010

Temporary License

(1) A temporary license may be issued to an applicant who meets the application requirements of ORS 694.065(2) and OAR 331-610-0000(1)

and (3) following agency receipt of a completed application and evidence of training, or Affidavit of Licensure from another state, and the required fee(s).

(2) The temporary license will be issued for a one-year period, expiring on the last day of the month one year from the date of issuance.

(3) Attainment of permanent licensure status by satisfactorily passing the examination supersedes the temporary hearing aid specialist license.

(4) A temporary license holder may change their designated supervisor if a new Declaration of Responsibility form is signed by the new supervisor and submitted with the application fee to the agency within five days of separation from the former designated supervisor.

Stat. Auth.: ORS 676.615, 694.095, 694.155
Stats. Implemented: ORS 676.615, 694.095, 694.155
Hist.: HB 144, f. 6-27-60; HD 8-1986, f. & ef. 5-29-86; HD 8-1990, f. 4-4-90, cert. ef. 4-1-91; HD 27-1990(Temp), f. & cert. ef. 12-31-90; HD 3-1991, f. 3-15-91, cert. ef. 4-1-91; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94; HD 18-1997, f. 12-12-97, cert. ef. 12-15-97; Renumbered from 333-025-0006; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-620-0020

Licensure

(1) Licensees are subject to the provisions of OAR 331-030-0010 regarding the issuance and renewal of a license, and to the provisions of OAR 331-030-0020 regarding the authorization to practice, identification, and the requirements for issuance of a duplicate authorization.

(2) A license renewal application received by the agency or post-marked after a license has expired but within three years from the expiration date, may be approved upon payment of the renewal and delinquency fee for each year in expired status and attestation of having obtained required continuing education pursuant to OAR 331-630-0000.

(3) A person who fails to renew within three years following the date of expiration may be granted a reinstated license upon reapplication, payment of application, examination and license fees as applicable, and successful passage of the written and practical examination required by OAR 331-610-0040. Upon passing the examination the original license number will be reinstated and a license issued.

(4) All license holders must obtain 12 contact hours of continuing education training each year as a condition of renewal whether the license is active or inactive.

(5) Evidence of required continuing education must be provided at the time of renewal by means of a prescribed self-attestation form certifying participation in approved continuing education.

(6) Appropriate documentation required in OAR 331-630-0000 must be accumulated and held by the license holder for a period of three years following renewal, or until submitted to the agency at the time of audit within the three-year period.

Stat. Auth.: ORS 676.605, 676.615, 694.085, 694.124, 694.125, 694.155
Stats. Implemented: ORS 676.605, 676.615, 694.085, 694.124, 694.125, 694.155
Hist.: HD 8-1990, f. 4-4-90, cert. ef. 4-1-91; HD 3-1991, f. 3-15-91, cert. ef. 4-1-91; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 333-025-0009; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-630-0000

Continuing Education Requirements

(1) After January 1, 2005, all licensees submitting application for renewal must have completed 12 contact hours of approved continuing education during the preceding year.

NOTE: Licensees renewing after the effective date of these rules, but before January 1, 2005, must complete 9 contact hours of approved continuing education.

(2) A licensee must report compliance with continuing education requirements through attestation on the license renewal document. Licensees will be subject to provisions of OAR 331-630-0010 pertaining to periodic audit of continuing education.

(3) Approved continuing education includes, at the agency's discretion:

(a) Participation or attendance at an instructional program presented, recognized, or under the auspices of any institution, agency, professional organization or association, or licensees or hearing aid manufacturers and approved by the agency.

(b) Education in subject matter related specifically to hearing or hearing aid technology, related health care, or laws and rules governing hearing aid dispensing. Approved subject matter may include but not be limited to the following: anatomy and physiology, disorders of hearing, audiology, habilitation and counseling, physics of sound, safety and sanitation, practice management, ethics, first aid, CPR, AIDS training for health care workers and ORS 694 and OAR 331, Divisions 601 through 650.

(c) Education in subject matter that advances the licensee's knowledge and skills to benefit the hearing impaired public.

(d) Credit will be limited to three hours collectively per year for subjects relating to practice management, ethics, sales, first aid, CPR and AIDS

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training. Licensees may not receive credit for repeat of courses taken within the same continuing education reporting period.

(4) The agency will maintain a list of approved continuing education programs. The list will be available upon request to the agency.

(5) For each college "credit hour", 12 continuing education contact hours will be recognized.

(6) To receive prior approval of a continuing education program, an individual or group sponsor must submit a written request to the agency, at least 30 days prior to the first scheduled presentation. The documentation required for agency review includes:

- (a) An outline of the subject matter to be covered;
- (b) Method of presentation;
- (c) Qualifications of person or persons presenting instruction;
- (d) Estimated duration;
- (e) Criteria for positive achievement, e.g., examination, attendance, participation by written or oral report; and
- (f) Statement of how the program relates to a licensee's knowledge and skills and how it benefits the hearing impaired public.

(7) The agency, in consultation with the Advisory Council on Hearing Aids or a standing subcommittee of the Council, will determine if the continued education program meets criteria for approval. The agency will establish the number of hours it will recognize or accept for programs obtaining prior approval of the agency.

(8) The agency will notify the program or course sponsor in writing of its determination regarding continuing education including, as applicable, acceptable credit or contact hours and explain any denial of the program or adjustment to creditable hours.

(9) Approval of a continuing education program may be retained for a maximum of two years, at which time the sponsor will be required to resubmit the documentation listed in subsection (6) of this rule to continue agency approval of the program.

(10) The agency may withdraw approval of a continuing education program if it is determined that:

- (a) The program teaching method or content has changed significantly without notice to the agency;
- (b) A certificate of participation was not issued to an individual who completed the program in accordance with the standards provided to the agency; or
- (c) A certificate of participation was issued to an individual who did not complete the program in accordance with the standards provided to the agency.

(11) Evidence of participation in required continuing education is the responsibility of the hearing aid specialist. Evidence of participation must include the documentation listed in OAR 331-630-0010.

(12) Hours obtained in excess of the 12 contact hours required each year will not be carried forward as continuing education credit for the succeeding reporting period.

(13) Continuing education requirements apply whether the renewal applicant is living or working within Oregon or outside of the state, if Oregon licensure is maintained.

Stat. Auth.: ORS 676.605, 676.615, 694.125, 694.155
Stats. Implemented: ORS 676.605, 676.615, 694.125, 694.155
Hist.: HD 8-1986, f. & ef. 5-29-86; HD 8-1990, f. 4-4-90, cert. ef. 4-5-90; HD 27-1990(Temp), f. & cert. ef. 12-31-90; HD 3-1991, f. 3-15-91, cert. ef. 4-1-91; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94; HD 18-1997, f. 12-12-97, cert. ef. 12-15-97; Renumbered from 333-025-0040; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-630-0010

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Health Licensing Office will audit a select percentage of licenses determined by the Council to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation shall submit to the agency, within 30 calendar days from the date of notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-630-0000.

(3) Documentation of a certificate of completion of attendance at a program or course provided by the sponsor must include:

- (a) Name of sponsoring institution/association or organization;
- (b) Title of presentation and description of content;
- (c) Name of instructor or presenter;
- (d) Date of attendance and duration in hours;
- (e) Course agenda;
- (f) Official transcript, diploma, certificate, statement or affidavit from the sponsor, attesting to attendance.

(4) If documentation of continuing education is invalid or incomplete, the licensee must correct the deficiency within 30 calendar days from the

date of notice. Failure to correct the deficiency within the prescribed time shall constitute grounds for disciplinary action.

(5) Misrepresentation of continuing education, or failing to meet continuing education requirements or documentation may result in disciplinary action, which may include, but is not limited to assessment of a civil fine and suspension or revocation of the license.

Stat. Auth.: ORS 676.605, 676.615, 694.125, 694.155
Stats. Implemented: ORS 676.605, 676.615, 694.125, 694.155
Hist.: HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-640-0000

Assistive Listening Devices

Assistive listening devices which are exempt from the provisions of ORS Chapter 694 are defined as products designed to solve one or more specific listening problems created by a hearing loss, and include personal or group listening devices, telephone listening devices, or alert/alarm systems. The primary difference between listening devices and hearing aids is that an assistive listening device is designed to assist in only one, or a few, listening environments, and is for temporary use only. A hearing aid is designed for use in a wide range of listening environments and is primarily for full time use. The following criteria shall be considered in categorizing an assistive listening device:

- (1) Personal Assistive Listening Device:
 - (a) Is used for the assistance of only one person;
 - (b) May be used either hardwired or wireless type;
 - (c) May be adaptable to particular environments;
 - (d) May not be fitted to an individual hearing loss;
 - (e) May not be sold as a standard hearing aid;
 - (f) May be an external option that will work with a hearing aid either through the telecoil or by direct audio input coupler built into a hearing aid.
 - (2) Group Assistive Listening Device:
 - (a) Includes infrared and FM systems and induction loop systems;
 - (b) Includes auditory trainers that are classified as such by the FDA exemption for group auditory trainers (21 CFR 801.421(e));
 - (c) May include telecaption decoders.
 - (3) Telephone Devices for the Hearing Impaired:
 - (a) Amplified handsets;
 - (b) In-line amplifiers for modular telephones;
 - (c) Receiver add-ons;
 - (d) An external option that will work with a hearing aid.
 - (4) Telecommunications Devices for the Deaf (TDD):
 - (a) Typically visually based;
 - (b) TDD and Teletypewriter for the deaf (TTY) systems.
 - (5) Alert/Alarm Systems:
 - (a) Systems that use a form of visual or vibratory stimuli to alert an individual;
 - (b) May be hardwired or use an acoustic pickup.
- [Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 676.615, 694.155
Stats. Implemented: ORS 676.615, 694.155
Hist.: HD 8-1986, f. & ef. 5-29-86; HD 8-1990, f. 4-4-90, cert. ef. 4-5-90; Renumbered from 333-025-0050; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-640-0010

Safety and Sanitation Requirements

(1) Each licensee shall keep areas of their facility for otoscopic examination, earmold impression taking, and audiometric examination clean and sanitary.

(2) Impression tools, otoscopic examination equipment and other devices that come in direct contact with the client must be disinfected prior to use. Licensees shall use an EPA registered high-level disinfectant, following the manufacturer's directions, to disinfect nondisposable equipment and tools.

(3) Disposable or disinfected otoscopic specula must be used when examining each ear.

(4) Licensees must wash or sanitize hands prior to taking an earmold impression.

Stat. Auth.: ORS 676.615, 694.155
Stats. Implemented: ORS 676.615, 694.155
Hist.: HD 23-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 333-025-0014; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-640-0020

Audiometric Testing Equipment

Licensed hearing aid specialists shall maintain audiometric testing equipment, currently used in the practice of administering evaluations, in proper working order at all times and shall be prepared to provide their record of at least annual calibration to a representative of the agency when

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so requested, upon inspection, or during an investigation conducted by the agency.

Stat. Auth.: ORS 676.615, 694.155
Stats. Implemented: ORS 676.615, 694.155
Hist.: HD 8-1990, f. 4-4-90, cert. ef. 4-5-90; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94;
Renumbered from 333-025-0027; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-640-0030

Statement to Prospective Purchaser

(1) A completed, signed written statement to purchaser must be delivered to the prospective purchaser before the consummation of the sale of a hearing aid.

(2) The statement to purchaser must be printed on forms measuring no less than 8-1/2 inches wide by 11 inches long, contain no type style smaller than ten point, and be clearly written. The printed material shall include:

(a) Designated, lined space of no less than three lines for the name, address and telephone number of the prospective purchaser.

(b) Designated, lined space for the date of sale.

(c) Designated, lined space for the make and model numbers of the hearing aid or aids sold and a statement that this information may be provided at time of delivery by the specialist/manufacturer. The statement to the purchaser must be attached to and become a part of the required documentation.

(d) Designated, lined space for the license numbers and signatures of the hearing aid specialist, and if applicable, a statement that a copy with the supervising hearing aid specialist's signature will be forwarded to purchaser if filled in after consummation of sale.

(e) Designated, lined space for the terms of any guarantee or expressed warranty that is not printed elsewhere on the form.

(f) The following current information: business name, business address, and business telephone number of the hearing aid specialist.

(g) The bordered statement required by ORS 694.036(1)(i).

(h) In addition to subsection (1)(e) of this rule, the hearing aid specialist shall deliver to the prospective purchaser a printed or reproduced copy of the Right To Rescind A Hearing Aid Purchase in its entirety, which shall be printed on the reverse side of the Statement to Prospective Purchaser.

(i) Statement concerning condition of hearing aid: new, demonstration instrument, reconditioned, or used.

(j) Designated space for the purchase price, which is the cost of the hearing aid and all related fees.

(k) The following statement, completed as applicable, in bold face: "Complaints regarding the sale, lease, or attempted sale or lease of hearing aids should be directed in writing to: Health Licensing Office, Advisory Council on Hearing Aids, (followed by the current agency address). "Complaint forms may be obtained by calling" (followed by the current telephone number of the agency).

(3) Each sale of hearing aid(s) requires a new Statement to Prospective Purchaser unless the hearing aid(s) is an exact replacement of units as listed in a prior statement.

(4) Pursuant to ORS 694.042(4), a hearing aid specialist may retain a portion of the purchase price, when the purchaser rescinds the sale during the 30-day rescission period, which shall not exceed 20% of the contract amount or \$500 whichever amount is less.

(5) Licensees will conduct and document a minimum of one post-delivery follow-up session with the purchaser before the expiration of the 30-day trial period. The follow-up session will take place at a predetermined and agreed upon location. The licensee must document in the purchaser's record if unable to contact or locate the purchaser, or to provide the follow-up session.

Stat. Auth.: ORS 676.605, 676.615, 694.036, 694.042, 694.155, 694.170
Stats. Implemented: ORS 676.605, 676.615, 694.036, 694.042, 694.155, 694.170
Hist.: HD 8-1986, f. & ef. 5-29-86; HD 8-1990, f. 4-4-90, cert. ef. 4-5-90; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94 ; Renumbered from 333-025-0065; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-640-0040

Additional Conditions for Referral

(1) In addition to the conditions listed in ORS 694.142 a hearing aid specialist shall not fit or dispense a hearing aid for use without first determining if the following conditions exist and, if so, referring the prospective purchaser to a physician:

(a) Evidence of significant cerumen accumulation in the auditory canal preventing visual inspection of the external auditory canal or external auditory meatus and tympanic membrane or foreign body in the ear canal; or

(b) Pain or discomfort in the ear.

(2) A Waiver of Medical Opinion form as required by ORS 694.142(6) must include the hearing aid specialist's name and license number, the purchaser's name, address and signature with date as well as the following statement: "I do not desire to have a medical evaluation before purchasing a hearing aid."

Stat. Auth.: ORS 694.142, 694.155, 694.170
Stats. Implemented: ORS 694.142, 694.155, 694.170
Hist.: HD 8-1990, f. 4-4-90, cert. ef. 4-5-90; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94;
Renumbered from 333-025-0029; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-640-0050

Additional Standards of Conduct

(1) In addition to the standards of conduct prescribed by ORS Chapter 694 and these administrative rules, licensees must comply with the requirements of ORS 694.142.

(2) Licensees must conform to state or federal laws regulating retail contracts or to any affirmation of fact or promise made in writing by the licensee which relates to the hearing aid or fitting and dispensing services and which becomes a part of the basis of the transaction when the purchaser relies on it or is, in part, induced into making purchase by it.

(3) Licensees must comply with the prevailing community standards for professional conduct. The Council recognizes and adopts the revised International Hearing Society's Code of Ethics, adopted October 1983, as its professional standards model. A copy of the document is on file at the agency for review.

(4) Licensees must observe the Standard Precautions adopted by the Centers for Disease Control as defined in Oregon Administrative Rule 437, Division 2, Subdivision Z, when providing services to consumers. Standard Precautions outlines certain practices which health workers must employ in order to prevent parenteral, mucous-membrane, and no intact skin exposure to blood-borne pathogens. The method of infection control requires the employer and employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV, and other blood borne pathogens. Precautions include hand washing, gloving, personal protective equipment, injury prevention, proper handling and disposal of needles and other sharp instruments and blood and body fluid contaminated products.

(5) In complaint cases, to determine the fitted instrument's ability to meet current industry standards in reference to ORS 694.042(1)(c), tests including, but not limited to the following, may be used for verification:

(a) Soundfield testing for speech discrimination; or

(b) Soundfield testing for puretone thresholds; or

(c) Real-ear probe microphone measurements.

Stat. Auth.: ORS 676.605, 676.615, 694.155, 694.170
Stats. Implemented: ORS 676.605, 676.615, 694.155, 694.170
Hist. Hist.: HD 23-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 333-025-0012; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-650-0000

Investigative Authority

The Health Licensing Office may initiate and conduct investigations of matters relating to the practice of hearing aid dispensing, pursuant to ORS 676.608 and 676.618, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and 694.147.

Stat. Auth.: ORS 676.608, 676.618, 694.147, 694.155
Stats. Implemented: ORS 676.608, 676.618, 694.147, 694.155
Hist. HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

331-650-0010

Schedule of Civil Penalties for Violations of Laws and Rules

The agency has adopted the following presumptive penalty schedule for the violations of the following laws and rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Dealing in or purporting to deal in hearing aids with an expired license is a violation of ORS 694.025 and OAR 331-030-0010(4) and shall incur the following penalties:

(a) For 1st offense: \$200;

(b) For 2nd offense: \$500;

(c) For 3rd offense: \$1,000 in addition to any other penalties allowed by law including probation, suspension, revocation or refusal to issue a license.

(2) Dealing in or purporting to deal in hearing aids without a license, with a license issued to another person, or a suspended license is a violation of ORS 694.025 and/or 676.612(1)(d) or 676.612(4) and OAR 331-030-0020(1) and shall incur the following penalties:

(a) For 1st offense: \$1,000;

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(b) For 2nd offense: \$5,000 in addition to any other penalties allowed by law including revocation or refusal to issue a license.

(3) Failing as a licensee to inform the agency within 30-calendar days of a change of information is a violation of OAR 331-010-0040(1) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$150.

(4) Dealing in hearing aids by a trainee when not under the direct supervision of a supervisor is a violation of ORS 694.025 and 694.065(2) and OAR 331-610-0020(1) and shall incur the following penalties:

- (a) For 1st offense: \$150;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(5) Failing, as a supervisor, to provide direct supervision of a trainee dealing in hearing aids is a violation of ORS 694.065(2), OAR 331-610-0020(1) and (6) and shall incur the following penalties:

(a) For 1st offense: \$500;

(b) For 2nd offense: \$1,000 and suspension of the authorization to provide supervisory training;

(c) For 3rd offense: \$5,000 in addition to any other penalties allowed by law including probation, suspension, revocation or refusal to issue a license.

(6) Failing, as a supervisor, to exercise management, guidance, and control over the activities of the temporary hearing aid specialist is a violation of ORS 676.612(1)(j) and OAR 331-610-0030(3) shall incur the following penalties:

(a) For 1st offense: \$500;

(b) For 2nd offense: \$1,000 and suspension of the authorization to provide supervisory training;

(c) For 3rd offense: \$5,000 in addition to any other penalties allowed by law including probation, suspension, revocation or refusal to issue a license.

(7) Failing, as a supervisor, to evaluate and approve all matters involved in the testing, fitting, or in the sale of a hearing aid by a temporary hearing aid specialist before ordering the recommended hearing aid(s) is a violation of ORS 676.612(1)(j) and OAR 331-610-0030(2) and/or (4) and shall incur the following penalties:

(a) For 1st offense: \$500;

(b) For 2nd offense: \$1,000 and suspension of the authorization to provide supervisory training;

(c) For 3rd offense: \$5,000 in addition to any other penalties allowed by law including probation, suspension, revocation or refusal to issue a license.

(8) Failing, as a supervisor of a temporary hearing aid specialist, to co-sign and approve the audiogram, order form and office copy of statement, or failing to mail or provide a copy of the statement to the prospective hearing aid purchaser as required in ORS 694.036 and 694.042 is a violation of ORS 676.612(1)(j) and OAR 331-610-0030(4) and shall incur the following penalties:

(a) For 1st offense: \$300;

(b) For 2nd offense: \$1,000 and suspension of the authorization to provide supervisory training;

(c) For 3rd offense: \$5,000 in addition to any other penalties allowed by law including probation, suspension, revocation or refusal to issue a license.

(9) Failing to meet continuing education requirements pursuant to OAR 331-630-0000(1), or to provide or retain required documentation is a violation of OAR 331-630-0000(11) and/or 331-630-0010(2) and shall incur the following:

(a) For 1st offense: \$500 and suspension or revocation of license;

(b) For 2nd offense: \$1,000 and suspension or revocation of license;

(c) For 3rd offense: \$5,000 in addition to any other penalties allowed by law including revocation or refusal to issue a license.

(10) Failure to correct continuing education deficiencies within prescribed time frames is a violation of OAR 331-630-0010(4) and shall incur the following penalties:

(a) For 1st offense: \$500 and suspension or revocation of license;

(b) For 2nd offense: \$1,000 and suspension or revocation of license;

(c) For 3rd offense: \$5,000 in addition to any other penalties allowed by law including revocation or refusal to issue a license.

(11) Disqualification from an examination as a result of conduct is a violation of OAR 331-610-0050(2) and shall incur the following penalties: \$1,000, disqualification from reexamination as determined by the agency director and revocation of temporary hearing aid specialists license

(12) Failing to keep the facility clean and sanitary is a violation of OAR 331-640-0010(1) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$1,000.

(13) Failing to disinfect devices after direct contact with client's skin is a violation of OAR 331-640-0010(2) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$1,000.

(14) Failing to wash or sanitize hands before taking an ear mold impression is a violation of OAR 331-640-0010(4) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$1,000.

(15) Failing to calibrate or provide proof of calibration on audiometric testing equipment is a violation of OAR 331-640-0020 and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$1,000.

(16) Failing to provide a client with a properly formatted Statement of Prospective Purchaser is a violation of ORS 694.036(1) and OAR 331-640-0030(1) and shall incur the following penalties per violation:

- (a) For 1st offense: \$300;
- (b) For 2nd offense: \$500;
- (c) For 3rd offense: \$1,000.

(17) Failing to obtain a signed medical waiver is a violation of ORS 694.142(6) and OAR 331-640-0040(2) and shall incur the following penalties per violation:

- (a) For 1st offense: \$300;
- (b) For 2nd offense: \$500;
- (c) For 3rd offense: \$1,000.

(18) Failing to respond timely to an agency request for information regarding a complaint is a violation of OAR 331-020-0050 and shall incur the following penalties per violation:

- (a) For 1st offense: \$300;
- (b) For 2nd offense: \$500;
- (c) For 3rd offense: \$1,000 in addition to any other penalties allowed by law including probation, suspension, revocation or refusal to issue a license.

(19) Failing to comply with the additional standards of conduct is a violation of ORS 676.612(1)(j) and OAR 331-640-0050(1), (2), (3) and/or (4) and shall incur the following penalties per violation:

- (a) For 1st offense: \$500;
- (b) For 2nd offense: \$1,000;
- (c) For 3rd offense: \$5,000 in addition to any other penalties allowed by law including probation, suspension, revocation or refusal to issue a license.

(20) Failing or refusing to rescind the sale of a hearing aid is a violation of ORS 676.612(1)(j) and (2), ORS 694.042(4), and ORS 694.147(2)(a) and shall incur a civil penalty established on a case-by-case basis.

(21) Failing to meet professional standards in dealing in hearing aids in violation of ORS 676.612(1)(j), ORS 694.147(2)(c) or OAR 331-640-0050(3) and shall incur the following penalties per violation:

- (a) For 1st offense: \$500;
- (b) For 2nd offense: \$1,000;
- (c) For 3rd offense: \$5,000 in addition to any other penalties allowed by law including probation, suspension, revocation or refusal to issue a license.

(22) Fraud or misrepresentation in the practice of dealing in hearing aids is a violation of ORS 676.612, 694.147(2) or OAR 331-640-0050(3) and shall incur the following penalties per violation:

- (a) For 1st offense: \$500;
- (b) For 2nd offense: \$1,000;
- (c) For 3rd offense: \$5,000 in addition to any other penalties allowed by law including probation, suspension, revocation or refusal to issue a license.

(23) Unprofessional conduct is a violation of ORS 676.612(1)(j), 694.147(2)(c) or OAR 331-640-0050(3) and shall incur the following penalties per violation:

- (a) For 1st offense: \$500;
- (b) For 2nd offense: \$1,000;
- (c) For 3rd offense: \$5,000 in addition to any other penalties allowed by law including probation, suspension, revocation or refusal to issue a license.

(24) Unprofessional conduct is a violation of ORS 676.612(1)(j), 694.147(2)(c) or OAR 331-640-0050(3) and shall incur the following penalties per violation:

- (a) For 1st offense: \$500;
- (b) For 2nd offense: \$1,000;
- (c) For 3rd offense: \$5,000 in addition to any other penalties allowed by law including probation, suspension, revocation or refusal to issue a license.

(25) Unprofessional conduct is a violation of ORS 676.612(1)(j), 694.147(2)(c) or OAR 331-640-0050(3) and shall incur the following penalties per violation:

- (a) For 1st offense: \$500;
- (b) For 2nd offense: \$1,000;
- (c) For 3rd offense: \$5,000 in addition to any other penalties allowed by law including probation, suspension, revocation or refusal to issue a license.

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(b) For 2nd offense: \$1,000;

(c) For 3rd offense: \$5,000 in addition to any other penalties allowed by law including probation, suspension, revocation or refusal to issue a license.

Stat. Auth.: ORS 676.615, 676.992, 694.147

Stats. Implemented: ORS 676.615, 676.992, 694.147

Hist.: HD 8-1990, f. 4-4-90, cert. ef. 4-5-90; HD 23-1993, f. 12-30-93, cert. ef. 1-1-94; HD 18-1997, f. 12-12-97, cert. ef. 12-15-97; Renumbered from 333-025-0075; HLO 6-2004, f. 6-29-04, cert. ef. 7-1-04

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Rules Repealed: 331-200-0000, 331-200-0010, 331-200-0020, 331-200-0030, 331-205-0000, 331-205-0010, 331-215-0050, 331-220-0070, 331-225-0010

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

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

331-205-0020

Definitions

The following definitions apply to OAR chapter 331, divisions 200 through 225:

(1) "Acceptable" means satisfactory or adequate; fulfilling the needs or requirements of a specified rule, provision or policy.

(2) "Agency" means the Health Licensing Office. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(3) "Antiseptic" means product used to stop or inhibit the growth of bacteria.

(4) "Approved" means acceptable to the Health Licensing Office.

(5) "Clean" means the absence of soil and dirt.

(6) "Communicable disease or condition" means diseases or conditions diagnosed by a licensed physician as being contagious or transmissible which include but are not limited to the following:

(a) Chickenpox;

(b) Diphtheria;

(c) Measles;

(d) Meningococcal Disease;

(e) Mumps;

(f) Pertussis (whooping cough);

(g) Plague;

(h) Poison oak (a transmittable form of "contact dermatitis");

(i) Rubella;

(j) Scabies;

(k) Staphylococcal skin infection (boils, infected wounds);

(l) Streptococcal infections (Strep throat);

(m) Tinea (ring worm);

(n) Tuberculosis.

(7) "Completed procedure" means a piercing which has been finished.

(8) "Cosmetic" means a preparation designed to beautify the body.

(9) "Director" means the individual who is responsible for the performance of the agency as defined in ORS 676.610. The director appoints all subordinate officers and employees to carry out the duties of the agency.

(10) "Earlobe" means the lowest part of the auricle; it consists of fat and fibrous tissue not reinforced by the auricular cartilage.

(11) "Easily accessible" means unrestricted use or availability, easy to approach or enter.

(12) "Enclosed storage area" means separate room, closet, cupboard or cabinet.

(13) "Equivalent" means comparable but not identical, covering the same subject matter.

(14) "Facility" means an establishment in which technicians perform the act of body piercing, and includes all areas used by a body-piercing technician and clients, including but not limited to treatment area and waiting/reception area.

(15) "Health Licensing Office" means the agency.

(16) "High-level disinfectant" means a chemical agent, which has demonstrated tuberculocidal activity and is registered with the EPA or approved by the FDA.

(17) "Instruments" means body-piercing equipment. Such equipment includes but is not limited to piercing needles, forceps, hemostats, tweezers, or other implements used to pierce, puncture, or be inserted into any part of the human body for the intended purpose of making a permanent hole. Such equipment also includes studs, hoops, rings or other decorative jewelry, materials or apparatuses inserted into any part of the human body for the intended purpose of placement in the hole resulting from piercing.

(18) "Linens" means cloths or towels used for such things as draping or protecting table.

(19) "Low-level disinfectant" means a chemical agent, which has demonstrated bactericidal, germicidal, fungicidal and limited virucidal activity and is registered with the EPA.

(20) "Needle" means implement used to pierce or puncture a hole in any part of the human body.

(21) "Operatory" means:

(a) A screened or separated area away from public access and viewing, isolated from a reception or waiting area, when piercings are conducted upon the genital, nipple, or any other discreet part of a person's body; or

(b) A designated area, which is segregated from other business activities or services, when ear-piercing services are conducted. The designated area may consist solely of a table, workstation and/or chair independent of any other retail or merchandise activities.

(22) "Owner" means and includes every person having ownership, control or custody of any place of business or employment.

(23) "Permanent Hole" means a hole produced by piercing or puncturing any part of the human body, with instruments intended to leave an opening in body tissue(s) into which an appropriate device or apparatus may be inserted. Permanent hole includes any body part newly pierced or punctured which is undergoing a healing process; and, any piercing whether or not removal of a device or apparatus from the perforation would result in fusing or healing of the tissue or skin structures.

(24) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons.

(25) "Piercing gun" means a hand-held tool manufactured exclusively for piercing the earlobe, into which studs and clutches are placed and inserted into the earlobe by a hand-squeezed action to create a permanent hole. The tool is made of plastic, stainless steel or other material that can be disinfected.

(26) "Place or places of business" means the name, mailing address, and location where the registrant or person provides piercing services.

(27) "Premises" means the entire area of the facility where body-piercing services are provided.

(28) "Program" means established within the agency with no advisory board.

(29) "Protective gloves" means gloves made of vinyl, latex or "Nitrile".

(30) "Public view" means open to view and easy for the public to see, located in the waiting or lobby area of place of business.

(31) "Renew" means to extend a current license or registration for a year beyond expiration or to bring an inactive license or registration to current, active status.

(32) "Sharps" means any object that can penetrate the skin, including but not limited to needles, scalpel blades, lancets, glass tubes that could be

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broken during handling and syringes that have been removed from their original sterile containers.

(33) "Sharps container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal. The container must be red and may be labeled with the "Biohazard" symbol.

(34) "Single Use" means products, instruments or items that are disposed of after each use, including but not limited to cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, piercing needles and protective gloves.

(35) "Standard Precautions" means a set of guidelines and controls, which outline certain practices which health workers should employ in order to prevent parenteral, mucous-membrane, and no intact skin exposure to blood-borne pathogens as published by the Centers for Disease Control (CDC).

(36) "Sterilization" means destruction of all forms of macrobiotic life, including spores.

Stat. Auth.: ORS 690.540, 690.560 & 690.570 (ch. 562 OL 1995)

Stats. Implemented: ORS 676.605, 676.615, 690.570

Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-205-0030

Fees

(1) Applicants, licensees and registrants are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Health Licensing Office are as follows:

(a) Application for facility license: \$150.

(b) Initial, one-year facility license: \$275.

(c) Renewal of facility license: \$275.

(d) Renewal of expired facility license: \$300.

(e) Technician application: \$10.

(f) Initial technician registration: \$25.

(g) Renewal of technician registration: \$25.

(h) Renewal of expired technician registration: \$35.

(i) Duplicate license or registration: \$10.

(j) An additional \$25 administrative processing fee will be assessed if a NSF or non-negotiable instrument is received for the payment of fees, penalties and charges. Refer to OAR 331-010-0010.

Stat. Auth.: ORS 676.605, 676.615, 690.550, 690.570 (Ch. 562, OL 1995, effective 9-9-95)
Stats. Implemented: ORS 676.605, 676.615, 690.550, 690.570 (Ch. 562, OL 1995, effective 9-9-95)

Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HLO 2-2003, f. 5-6-03, cert. ef. 5-15-03; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-210-0000

Facility Licensure; Criteria

The Health Licensing Office will issue a facility license to qualified persons as provided in OAR 331-030-0010, and if the applicant:

(1) Is at least 18 years of age, if a natural person. If the applicant is an entity other than a natural person, the entity must be formed and operated in accordance with Oregon law.

(2) Provides current government issued photographic documentation confirming date of birth, such as a driver's license, passport or school/military/governmental records;

(3) Has successfully completed four years of standard high school education or the equivalent. Acceptable documentation includes, but is not limited to: a high school diploma, a letter from any school verifying completion of high school equivalency; military records verifying completion of a high school equivalency; or GED passing scores;

(4) Registers with the Corporations Division and receives an assumed business name prior to applying for a facility license (unless doing business under the full name of the owner);

(5) Submits application on a form prescribed by the agency accompanied by payment of the application and licensing fees and submission of the required documentation. Required documentation includes the completed application form and documentation which contains the following:

(a) Name of owner;

(b) Corporation or partnership;

(c) Facility address and mailing address (if different from physical location);

(d) Area code and telephone number;

(e) Applicant's autoclave make, model and serial number; and

(f) A copy of the spore test results from applicant's autoclave, or submission of a signed attestation requesting an exemption under OAR 331-220-0010 based on one of the following existing conditions:

(A) Exclusive use of prepackaged sterile body and ear piercing equipment, including needles; or

(B) Exclusive use of prepackaged sterile ear piercing equipment that utilizes an encapsulated single use stud with clasp mechanism designed for an earlobe piercing gun as defined in OAR 331-205-0020(25).

(6) Certifies that application information is correct;

(7) Provides a map or directions to the facility if it is located in a rural or isolated area;

(8) Provides a list of registered technicians providing services on the premises of facility;

(9) Complies with all applicable rules and regulations of the agency and other state, county and local agencies. This includes compliance with specifications for building, fire and plumbing codes, and with exit and fire standards established by the Building Codes Agency, the Office of the State Fire Marshal, and compliance with Oregon Occupational Safety and Health Rules. These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

NOTE: These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

Stat. Auth.: ORS 690.520, 676.605, 676.615, 690.550, 690.570

Stats. Implemented: ORS 690.520, 676.605, 676.615, 690.550, 690.570

Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-210-0010

Criteria for Operating a Facility; Inspections

(1) Each facility owner shall:

(a) Require each individual working within the facility premises providing piercing services to be registered with the Health Licensing Office as a body-piercing technician;

(b) Be responsible for technicians complying with all applicable health, safety, infection control and sterilization rules and regulations of the agency and other state agencies;

(c) Be responsible for notifying the agency prior to employment of new registrant(s) within the facility or immediately following termination of any registrant's employment;

(d) Be responsible for maintaining a list of registrants employed at the facility for review by the agency upon request;

(e) Post risk factor notice in public view on the facility premises when open for business;

(f) Post name, address and telephone number of the Health Licensing Office for clients to contact regarding services, licensing issues or complaints;

(g) Provide a disclosure statement prescribed by the Health Licensing Office to all clients on risks involved in body-piercing services, and after-care instructions;

(h) Allow an agency enforcement officer to inspect the facility when it is open for business;

(i) Be prohibited from exhibiting, or failing to prevent employees or technicians from exhibiting, behavior which impedes the normal progress of the inspection; and

(j) Arrange for the agency to inspect the premises if a year has elapsed since the last inspection and/or the agency has notified the licensee that it has attempted and been unable to conduct an inspection because the facility was closed.

(2) Facility licenses are not transferable from person to person, business to business, or to a new location.

(3) Acquiring a Facility: Persons purchasing an existing body-piercing facility shall:

(a) Meet the requirements of a new facility (refer to OAR 331-210-0000);

(b) Submit a new facility application, pay the application and license fees, and be issued a new facility license prior to assuming operation of the business; and

(c) Comply with all administrative rules of the agency concerning health, safety, infection control and sterilization requirements.

(4) Relocating a Facility: Owners of body-piercing facilities being moved to a new physical location shall:

(a) Meet the requirements of a new facility (refer to OAR 331-210-0000);

(b) Submit an application, pay the application and license fees, and be issued a new facility license prior to opening for business at the new location; and

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(c) Comply with all administrative rules of the agency concerning health, safety, infection control and sterilization requirements.

(5) Closing a Facility: Facility owners closing their facilities shall inform the agency in writing by fax, mail, electronic mail, or in person within 5 calendar days of closure of the facility; if the same owner reopens the facility while the license is still current, the owner must inform the agency prior to resuming business.

(6) All premises where services are performed by body-piercing technicians must be licensed as a facility.

Stat. Auth.: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Stats. Implemented: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-210-0020

Body Piercing Technician Registration Qualification

(1) Body-piercing technicians must be registered with the Health Licensing Office before providing services. Registered body-piercing technicians must comply with all applicable health, safety, infection control and sterilization rules and regulations of the agency and other state agencies.

(2) To qualify for registration with the agency as a body-piercing technician, an applicant must:

(a) Be at least 18 years of age and provide a current government issued photographic documentation confirming date of birth. Acceptable documentation includes, but is not limited to a driver's license, passport or school/military/governmental records;

(b) Have successfully completed four years of standard high school education or the equivalent. Acceptable documentation includes, but is not limited to: a high school diploma, a letter from any school verifying completion of high school equivalency; military records verifying completion of a high school equivalency; or GED passing scores; and

(c) Provide satisfactory evidence of successful completion of training in the courses listed in (A) through (C) of this rule subsection. Training includes attendance or participation at an instructional program presented, recognized, or under the auspices of any permanently organized institution, agency, or professional organization or association recognized by the agency.

- (A) Basic First Aid;
- (B) Blood borne pathogens; and
- (C) Aftercare procedures.

(3) Technicians are prohibited from providing body-piercing services outside of a licensed body-piercing facility. A registration is not transferable from person to person.

(4) Notice shall be submitted to the agency prior to any change of employment at a new facility location.

Stat. Auth.: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Stats. Implemented: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-210-0021

Application Requirements

(1) Individuals applying for registration to practice body piercing must meet the requirements of OAR 331-030-0000 in addition to the provisions of this rule.

(2) Applicants must submit a completed application form prescribed by the agency, which shall contain the information listed in OAR 331-030-0000(5), be accompanied by payment of the application and registration fees, provide the documentation required in OAR 331-210-0020 and include the following:

(a) Facility name, license number and business address where services are provided, including telephone number and area code; and

(b) Signed copy of the written statement affirming receipt of administrative rules and client notification brochure outlining risk factors and possible consequences of piercing.

Stat. Auth.: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Stats. Implemented: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Hist.: HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-215-0000

Issuance and Renewal of Facility Licenses

(1) Issuance and renewal of a facility license is subject to the provisions of OAR 331-030-0010.

(2) Application for renewal shall include the following information:

- (a) Facility license number and expiration date;
- (b) Name and place of business, or business mailing address;
- (c) Area code and telephone number; and

(d) A list of registered technicians currently providing services on the premises of facility.

(3) Failure to renew a license requires payment of the facility license expired renewal fee in order to renew the license. Refer to OAR 331-205-0030(2)(d).

(4) Failure to renew a license after one year from the expiration date requires reapplication, meeting all requirements of OAR 331-210-0000 and payment of the application and one-year license fees in order to obtain licensure.

Stat. Auth.: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Stats. Implemented: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-215-0010

Issuance and Renewal of Technician Registrations

(1) Issuance of a technician registration authorizes the registrant to provide body-piercing services in a licensed facility. Issuance and renewal of a technician registration is subject to the provisions of OAR 331-030-0010.

(2) Application for renewal shall include the following information:

- (a) Applicant's name and current residential and mailing address;
- (b) Applicant's registration number and expiration date;
- (c) The facility name and license number, business address where services are being provided and business area code and telephone number.

(3) Failure to renew a registration before the expiration date requires payment of the technician registration expired renewal fee in order to renew the registration. Refer to OAR 331-205-0000(2)(h).

(4) Failure to renew a registration after one year from the date of expiration requires reapplication and payment of the application and registration fees in order to obtain a registration.

Stat. Auth.: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Stats. Implemented: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-215-0020

Document Issuance

(1) Applicants who satisfactorily complete the application requirements shall be issued a license or registration by the Health Licensing Office authorizing the holder to operate a facility or provide body-piercing services according to ORS 690.510 or 690.520.

(2) Facility owners and technicians are subject to the provisions of OAR 331-030-0010 regarding issuance and renewal of a license or registration, and to the provisions of OAR 331-030-0020 regarding the authorization to practice, identification and requirements for issuance of a duplicate authorization.

Stat. Auth.: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Stats. Implemented: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-215-0030

Posting of Licenses, Registrations, Disclosure Statement and Notice

Facility license holders shall post the following in public view within the premises:

- (1) All facility licenses and technician registrations;
- (2) A disclosure statement prescribed by the Health Licensing Office, advising of the risks and possible consequences of body-piercing services; and

(3) A notice containing the address of the agency and the procedure for filing a complaint.

Stat. Auth.: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Stats. Implemented: ORS 690.520, 676.605, 676.615, 690.550, 690.570
Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-215-0040

Piercing Services at Location Other than Named Place(s) of Business

(1) Body-piercing services shall not be provided outside of a licensed facility.

(2) Body-piercing technicians shall not provide services at any locations other than licensed body-piercing facilities.

(3) Upon submission of a written request to the Health Licensing Office, body-piercing services may be conducted at locations other than the physical site of a licensed facility solely for the purpose of product demonstration, industry trade shows or events where the sole purpose is education and not providing services to the general public. Written authorization from the agency shall be required prior to providing piercing services.

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(4) Body-piercing services offered or provided at fairs or other events must be licensed as a facility by the agency prior to assuming operation of the business.

(5) A body piercing technician may provide services outside the premises of a licensed facility on a person residing in a health care facility or confined to their residence through medical disability or restriction.

(6) Upon application, qualification and payment of fees the agency may issue a facility license for fairs, carnivals or bazaars provided compliance with safety, infection control and sterilization practices and facility requirements under OAR 331, Division 220, Safety and Infection Control Standards, are met and maintained.

(7) All persons providing body-piercing services at fairs or other locations listed in subsection (3) and (4) of this rule must be registered by the agency prior to providing services.

(8) All technicians providing body-piercing services at locations listed in subsection (3) and (4) of this rule or at more than one business location must carry their registration with them and post it in public view while working.

Stat. Auth.: ORS 676.605, 676.615, 690.570

Stats. Implemented: ORS 676.605, 676.615, 690.570

Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-220-0000

Compliance with All Applicable Regulations

(1) Facility license holders and registered technicians shall observe and be subject to all state regulations pertaining to public health and safety. Compliance with building, state fire, plumbing, and electrical regulations is required.

(2) In addition, when an employee/employer relationship exists, facility license holders shall comply with ORS 654 and the Oregon Safe Employment Act.

(3) The cleanliness and sanitation of any common area of separately licensed facilities in one premise is the responsibility of each license holder. Violations found in the common area may be cited against all facility license holders.

(4) Facilities and registered technicians shall use and maintain appropriate equipment for providing body-piercing services at the place of business. Equipment includes but is not limited to:

- (a) Piercing gun of non-porous material, which can be disinfected;
- (b) Single-use stainless steel needles;
- (c) Sterilization bags with color strip indicator;
- (d) Protective disposable gloves;
- (e) Single-use towels, tissues or paper products;
- (f) Sharps container; and
- (g) Approved equipment for cleaning and sterilizing instruments.

(5) Products and instruments are prohibited from being used in a manner that is disapproved by the agency or the U.S. Food and Drug Administration.

(6) Facilities shall be kept clean and orderly and equipment shall be maintained in good repair.

(7) All surfaces, including counters, tables, equipment, client chairs or recliners in service areas shall be made of smooth, non-absorbent and non-porous material.

(8) A high-level disinfectant or bleach solution, used according to the manufacturer's instructions, shall be used to disinfect surfaces contaminated by blood or bodily fluids.

(9) Disposable products that come in contact with the area(s) to be pierced shall be stored in closeable clean containers.

(10) Clean, sterilized re-usable instruments shall be stored in clean, sterilized containers and must be stored separately from used or soiled tools or instruments.

(11) Chemicals shall be stored in labeled, closed containers.

(12) Clean linens, towels or single-use disposable paper products, and single-use piercing needles, piercing studs and protective gloves shall be used for each client.

(13) Clean towels and linens shall be stored in a clean area.

(14) Used linens shall be disposed of or stored in a closed or covered container until laundered.

(15) Used linens shall be laundered either by regular commercial laundering or by a non-commercial laundering process which includes use of commercial laundry detergent manufactured for the purpose of cleaning clothes, linens or other washable fabric, and immersion in hot water during the hot water wash/rinse operation.

(16) Facilities and registered technicians shall have easy access to a sink with hot and cold running water, as part of surrounding premises or adjacent to the facility but separate from a restroom.

(17) Lavatories located within the facilities shall be kept clean and in good working order at all times.

(18) All waste material related to body-piercing shall be deposited in a covered container following service for each client.

(19) All public places in a facility shall be governed under the Oregon Indoor Clean Air Act as it appears in ORS 433.835 through 433.875 and 433.990.

(20) Pets or other animals shall not be permitted in the business facility. This prohibition does not apply to registered therapy animals, trained guide animals for the disabled, sightless or hearing impaired, or to fish in aquariums or nonpoisonous reptiles in terrariums.

(21) Waste disposal container used to store cigar or cigarette ashes, cigar or cigarette butts, or other tobacco waste shall be a metal or fire-retardant container.

Stat. Auth.: ORS 676.605, 676.615, 690.570

Stats. Implemented: ORS 676.605, 676.615, 690.570

Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-220-0010

Approved Sterilization Modes; Procedures

(1) All piercing instruments, which have or may come into direct contact with a client's skin or be exposed to blood or bodily fluid must be sterilized.

(2) Piercing needles shall not be re-used even if cleaned and sterilized by use of an autoclave. All piercing needles shall be single-use.

(3) Approved modes of sterilization include:

(a) Use of autoclave (steam or chemical) sterilizer, registered and listed with the U.S. Food and Drug Administration, which is used, cleaned and maintained according to the manufacturer's directions;

(b) Sterilization equipment that has been approved, registered and listed with the U.S. Food and Drug Administration, which is used, cleaned and maintained according to the manufacturer's directions; or

(c) Single-use prepackaged sterilized instruments obtained from suppliers or manufacturers.

(4) Facility license holders where sterilization is conducted shall conduct routine tests for the effectiveness of sterilization at least monthly using biological monitoring (commercial preparation of spores). Testing shall be conducted as follows:

(a) Chemical indicators (color change) to assure sufficient temperature and proper functioning of equipment during each sterilization cycle; and

(b) Biological monitoring system (commercial preparation of spores) to assure all microorganisms have been destroyed and sterilization achieved.

(5) Chemical and biological test indicators shall be available at the business premises at all times and test results available for inspection by the Health Licensing Office Enforcement Officers. Facilities who contract for use of sterilization equipment shall make copies of the test results available to the agency upon request. Biological test results must be on laboratory letterhead and must contain the test date, and the name, model and serial number of the unit tested. Biological test results must be retained for a two-year period.

(6) Instruments approved for re-use in providing piercing services shall be cleaned prior to sterilizing by brushing or swabbing to remove foreign material or debris, rinsing, then:

(a) Immersing in detergent and water in an ultrasonic unit that operates at 40 to 60 kilohertz, followed by a thorough rinsing and wiping; or

(b) Submerging and soaking in a protein dissolving detergent/enzyme cleaner followed by a thorough rinsing and wiping.

(7) Instruments approved for re-use in providing piercing services shall be cleaned according to subsection (3) of this rule and placed in sterile bags or containers, with color strip indicators, sterilized by exposure to one cycle of an approved sterilizer and handled using sterile techniques.

Stat. Auth.: ORS 676.605, 676.615, 690.570

Stats. Implemented: ORS 676.605, 676.615, 690.570

Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-220-0020

Earlobe Piercing Services

Facilities and registered technicians who provide earlobe piercing services exclusively, shall be subject to the following standards:

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(1) Facilities and registered technicians shall use a piercing instrument or gun that pierces an individual's earlobe using a sterile, encapsulated single-use stud with clasp earlobe piercing system. A pre-packaged sterilized ear-piercing stud must be inserted into the earlobe simultaneously with piercing.

(2) The piercing gun shall be made of material which can be disinfected. All parts of the gun in direct contact with the client's skin shall be disinfected with a high-level disinfectant before being used on a client.

(3) Single-use prepackaged sterilized ear piercing studs shall be used for each client.

(4) Single use piercing instruments must be discarded in a medical waste container immediately after use.

(5) Facilities and registered technicians providing earlobe-piercing services exclusively using a manufactured earlobe piercing gun and single-use prepackaged sterilized ear studs are exempted from use of an autoclave.

(6) Earlobe piercing services shall be conducted in an area of the facility, which is separately maintained from other business activities or services as defined in OAR 331-205-0020(21).

(7) New or disinfected piercing gun tools shall be stored separately from used or soiled tools or instruments.

(8) Facilities and registered technicians shall comply with the licensing, registration and safety/infection control regulations of OAR 331, Divisions 200 through 225.

Stat. Auth.: ORS 676.605, 676.615, 690.570

Stats. Implemented: ORS 676.605, 676.615, 690.570

Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-220-0030

Handling Disposable Materials

(1) Disposable materials coming into contact with blood and/or bodily fluids shall be disposed of in a sealable plastic bag (separate from sealable trash or garbage liners) or in a manner that not only protects the technician and the client but also others who may come into contact with the material such as sanitation workers.

(2) Disposable sharp objects that come in contact with blood and/or body fluids shall be disposed of in a sealable rigid (puncture proof) sharps container that is strong enough to protect the technician and client and others from accidental cuts or puncture wounds that could happen during the disposal process.

(3) Facilities shall have sealable plastic bags available. They shall also have sealable rigid containers available at the facility if disposable sharp objects are used.

Stat. Auth.: ORS 676.605, 676.615, 690.570

Stats. Implemented: ORS 676.605, 676.615, 690.570

Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-220-0040

Communicable and Blood Borne Diseases

Facility owners and registered technicians shall be responsible for adhering to the following standards:

(1) A technician or an employee is prohibited from providing body-piercing services or working in a facility while having a disease or condition which has been diagnosed by a physician to be a communicable or transmissible disease. Refer to OAR 331-205-0020(6).

(2) A technician or employee shall not diagnose or treat any suspected communicable disease or condition or knowingly provide body-piercing services on clients with communicable diseases or conditions. Refer to OAR 331-205-0020(6).

(3) A technician providing service or working in a facility after diagnosis of immunodeficiency disease or condition or Hepatitis B, C, or D shall observe and follow all current Centers for Disease Control (CDC) standards for public service workers regarding personal protection equipment and disposal of blood or bodily fluid contaminated articles, tools and equipment. These standards shall also apply to technicians or employees providing services to clients who have been diagnosed with having an immunodeficiency disease or condition or Hepatitis B, C, or D.

NOTE: It is the position of the Health Licensing Office that human immunodeficiency virus (HIV) is the cause of acquired immunodeficiency syndrome (AIDS) and related immunodeficiency conditions. This virus, as well as Hepatitis B virus (HBV), Hepatitis C virus (HCV) and Hepatitis D virus (HDV), may be transmitted by sharp instruments contaminated by blood or other body fluids, if proper precautions are not followed. As the carriers of these viruses may have no symptoms, the most prudent course to follow is to treat body fluids from all persons with the same high standards of caution and to rigorously follow established safety and sanitation practices as required by the law and rules of the Agency. There is no published evidence to support casual transmission of HIV, by sneezing or touching, even in close household settings involving AIDS patients and family members caring for them at home. Because HIV is not spread by casual means and because of the inadequacies of the HIV anti-

body test, there is no reason for the Agency to require blood tests prior to registration and/or licensure. Good hand washing after glove removal and between each client is imperative and the most important procedure for prevention of all infections, including HIV. Uniform body fluid precautions are ample to prevent transmission of HIV or HBV, HCV and/or HDV in a facility setting.

Stat. Auth.: ORS 676.605, 676.615, 690.570

Stats. Implemented: ORS 676.605, 676.615, 690.570

Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-220-0050

Serving Clients

Facility owners and registered technicians shall be responsible for adhering to the following standards while serving clients in the facility:

(1) Technicians shall observe and follow thorough hand washing with soap and water or equivalent hand washing product before and after serving each client and as needed to prevent cross contamination and/or transmission of bodily fluids, infections or exposure to service related wastes or chemicals.

(2) Technicians shall cleanse the client's skin, excluding the areas surrounding the eyes, by washing with a U.S. Food and Drug Administration registered antiseptic solution applied with a clean single-use paper product before and after piercing the client's skin.

(3) All substances shall be dispensed from containers in a manner to prevent contamination of the unused portion. Single use tubes or containers and applicators shall be discarded following the piercing service.

(4) Use of any type of marking pen must be on cleansed skin or by use of a surgical marking pen sanitized by design, such as alcohol based ink pens.

(5) Use of styptic pencils or alum solids to control blood flow is prohibited.

(6) Aftercare shall be administered to each client following service. Aftercare shall consist of both verbal and written instructions concerning proper care of the pierced area. Instructions shall specify:

- (a) Care following service;
- (b) Possible side effects; and
- (c) Restrictions.

(7) Technicians who have open sores or bleeding lesions on their hands shall not have client contact until the lesions have healed to the scab phase.

(8) As a standard precaution against the possibility of cross-contamination, technicians shall wear single-use disposable protective gloves when providing service.

(9) Technicians shall wear eye goggles, shields and/or a mask if splattering is possible while providing services.

(10) Disposable materials that come in contact with blood or bodily fluids shall be discarded according to provisions of OAR 331-220-0030 to protect the technician, clients and others who may come into contact with the material.

(11) Disposable cups shall be available for customers' use if beverages are served in facilities, and disposed of after use by the same methods as other waste materials.

Stat. Auth.: ORS 676.605, 676.615, 690.570

Stats. Implemented: ORS 676.605, 676.615, 690.570

Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-220-0060

Client Records

(1) Facilities shall maintain client records. The record shall include the following for each client:

- (a) Name, address, telephone number and date of birth of client;
- (b) Date of each service, body location and type of service performed on client;
- (c) Name and registration number of the technician providing service and special instructions or notations relating to the client's medical or skin conditions;
- (d) Complete list of the client's sensitivities to medicines or topical solutions;
- (e) History of the client's bleeding disorders;
- (f) Description of complications during procedure(s);
- (g) Copy of signed statement that the client has received educational material and aftercare instructions;
- (h) Proof of age consisting of one of the following:
 - (A) Copy of current government issued photographic identification;
 - (B) Written record of the type of current government issued photographic Identification presented with the identification number; or
 - (C) If client is a minor, written parental consent. As stated in OAR 331-220-0080(1)(d)(B) written parental consent must be submitted in per-

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son to the facility for piercing services on a minor. Parent or legal guardian must present current government issued photographic identification at the time of written consent.

(2) Facility owners and technicians may obtain advice from physicians regarding medical information needed to safeguard client and technician.

(3) Records shall be kept at facility premises for a minimum of two years and must be made available immediately upon request from an enforcement officer of the Health Licensing Office.

(4) Pre-service information in written form shall be given to client to advise of possible reactions, side effects and potential complications of the body-piercing process. Aftercare instructions shall be given to the client both verbally and in writing after every service.

(5) Client records must be typed or printed in a legible format. Client records, which are not readable by enforcement officers, will be treated as incomplete. Incomplete records may subject the facility to civil penalties.

Stat. Auth.: ORS 676.605, 676.615, 690.530, 690.570

Stats. Implemented: ORS 676.605, 676.615, 690.530, 690.570

Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-220-0080

Prohibitions

(1) Piercing is prohibited:

(a) On a person who is inebriated or appears to be incapacitated by the use of alcohol or drugs;

(b) On a person who shows signs of recent intravenous drug use;

(c) On a person with sunburn, communicable skin diseases or disorders such as open lesions, rashes, and wounds or puncture marks;

(d) On a person under 18 years of age;

(A) Genital or nipple piercing is prohibited regardless of parental consent.

(B) Written parental consent must be submitted in person to the facility for piercing services on a minor. Parent or legal guardian must present current government issued photographic identification at time of written consent.

(2) Use of personal client jewelry or any apparatus or device presented by the client for use during the initial body (including ears) piercing is prohibited. Pre-sterilized jewelry, apparatus or device(s) shall be provided by the facility and be of a metallic content recognized as compatible with piercing services.

(3) Use of piercing guns shall be limited to piercing of the earlobe as defined in OAR 331-205-0020(10) exclusively. No other part of the body or ear shall be pierced by use of a piercing gun.

(4) Piercing with a manual loading spring operated piercing gun is prohibited.

(5) Piercing the earlobe with any type of piercing gun which does not use the presterilized encapsulated stud and clasp system is prohibited.

Stat. Auth.: ORS 676.605, 676.615, 690.507, 690.530, 690.570

Stats. Implemented: ORS 676.605, 676.615, 690.507, 690.530, 690.570

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0000

Investigative Authority

The Health Licensing Office may initiate and conduct investigations of matters relating to the practice of body piercing, pursuant to ORS 676.608 and 676.618, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and 690.515.

Stat. Auth.: ORS 676.605, 676.608, 676.612, 676.615, 676.992, 690.515, 690.570

Stats. Implemented: ORS 676.605, 676.608, 676.612, 676.615, 676.992, 690.515, 690.570

Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0020

Schedule of Penalties for Facility Licenses Violations

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of the following facility license laws and rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

(1) Operating a facility by a registered technician without first filing a facility application, paying the fees, and receiving a facility license is a violation of ORS 690.507(2) and OAR 331-210-0010(6) and shall incur the following penalties:

(a) For 1st offense: \$200;

(b) For 2nd offense: \$500;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license.

(2) Operating a facility with an expired license is a violation of ORS 690.507(2), 690.520(4) and OAR 331-030-0010(4) and shall incur the following penalties:

(a) For 1st offense: \$200;

(b) For 2nd offense: \$500;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license.

(3) Operating a facility without a facility license by a person who is not registered or is suspended is a violation of ORS 690.507(2) and OAR 331-215-0040(1) and shall incur the following penalties:

(a) For 1st offense: \$500;

(b) For 2nd offense: \$1,000;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license.

(4) Allowing an unregistered person to provide services in a licensed facility is a violation of ORS 676.612(1)(i), 690.507(1) and OAR 331-210-0010(1)(a) and shall incur the following penalties:

(a) For 1st offense: \$500;

(b) For 2nd offense: \$1,000;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license.

(5) Failing to allow the agency to inspect the premises when the facility is open or obstructing or hindering the normal progress of the inspection, threatening or exerting physical harm, or enabling another individual to impede the inspection progress is a violation of OAR 331-210-0010(1)(h) and/or (i) and ORS 676.612(1) (h) and/or (o) and shall incur the following penalties:

(a) For 1st offense: \$500;

(b) For 2nd offense: \$1,000;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(6) Allowing an employee to provide services with an expired registration is a violation of ORS 676.612(1)(i), 690.507(1) and OAR 331-210-0010(1)(a) and shall incur the following penalties:

(a) For 1st offense: \$200;

(b) For 2nd offense: \$500;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license.

(7) Failing to meet the specifications and standards required under OAR 331-210-0000(9) in a facility is a violation of OAR 331-220-0000(1) and shall incur immediate suspension of the facility license until the violation is corrected.

Stat. Auth.: ORS 676.992, 690.515

Stats. Implemented: ORS 676.992, 690.515

Hist.: HDLB 1-1996, f. & cert. ef. 4-1-96; HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0030

Schedule of Penalties for Registration Violations

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of the following registration laws and rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation.

(1) Operating with an expired technician registration is a violation of ORS 690.507(1), OAR 331-030-0010(4) and 331-210-0020(1) and shall incur the following penalties:

(a) For 1st offense: \$200;

(b) For 2nd offense: \$500;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a registration.

(2) Performing services without a registration, with a registration issued to another person, or a suspended registration is a violation of ORS 676.612(1)(d) or 676.612(4) or 690.507(1) and OAR 331-210-0020(1) and shall incur the following penalties:

(a) For 1st offense: \$500;

(b) For 2nd offense: \$1,000;

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(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a registration.

(3) Providing services as a registrant in an unlicensed facility is a violation of ORS 690.507(2) and OAR 331-215-0040(2) and shall incur the following penalties:

- (a) For 1st offense: \$200;
- (b) For 2nd offense: \$500;
- (c) For 3rd offense: \$1,000.

(4) Failing as a registrant to inform the agency within 30 calendar days of a change of employment with a facility is a violation of OAR 331-010-0040(1)(d) and/or 331-020-0040(1)(e) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$150.

(5) Failing to notify the agency of a move or a change of home address within 30 calendar days of the change is a violation of OAR 331-010-0040(1) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$150.

Stat. Auth.: ORS 676.992, 690.515

Stats. Implemented: ORS 676.992, 690.515

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0040

Schedule of Penalties for License/Registration Violations

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of the following license/registration laws and rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

(1) Altering a facility license and/or technician registration issued by the agency is a violation of ORS 676.612(1)(a), (c), and (j) and OAR 331-020-0070(2)(e) and shall incur the following penalties:

- (a) For 1st offense: \$500;
- (b) For 2nd offense: \$1,000;
- (c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(2) Failing to post a facility license and/or technician registration in a publicly visible place within the facility is a violation of ORS 690.520(5) and/or 690.510(4) and OAR 331-215-0030(1) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$500;
- (c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration. Posting of photocopies, reproductions, and pocket identification cards will be cited as failure to post.

(3) Failing to return or surrender a facility license and/or technician registration upon demand by the agency is a violation of OAR 331-030-0020(5) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(4) Failing to provide appropriate photographic identification upon request by the agency is violation of OAR 331-030-0020(4) and ORS 676.612(1)(o) and shall incur the following penalties:

- (a) For 1st offense: \$300;
- (b) For 2nd offense: \$500;
- (c) For 3rd offense: \$1,000.

Stat. Auth.: ORS 676.992, 690.515

Stats. Implemented: ORS 676.992, 690.515

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0050

Schedule of Penalties for Water Supply and Disposal Violations

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and sanitation rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the fol-

lowing schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

(1) Failing to have immediate access to both hot and cold running water is a violation of OAR 331-220-0000(17) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(2) Failing to have a water supply that meets state pressure and purity requirements is a violation of OAR 331-220-0000(1) and shall incur the following penalty for any offense: Referral of the violation to the appropriate building code authority and immediate suspension of the facility license until the violation is corrected.

(3) Improperly disposing of liquid waste from a facility is a violation of OAR 331-220-0000(1) and shall incur the following penalty for any offense: Referral of the violation to the appropriate building code authority and immediate suspension of the facility license until the violation is corrected.

Stat. Auth.: ORS 676.992, 690.515

Stats. Implemented: ORS 690.560

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0060

Schedule of Penalties for Towels and Linens Violations

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and sanitation rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

(1) Failing to use clean towels or linens for each client is a violation of OAR 331-220-0000(13); and/or failing to launder towels and linens as required is a violation of OAR 331-220-0000(16), and shall incur the following penalties for each violation:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$300.

(2) Failing to store clean towels and linens in a clean area is a violation of OAR 331-220-0000(14) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$300.

(3) Failing to deposit soiled towels in a covered container is a violation of OAR 331-220-0000(15) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$150.

Stat. Auth.: ORS 676.992, 690.515

Stats. Implemented: ORS 690.560

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0070

Schedule of Penalties for Waste Disposal Violations

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

(1) Failing to immediately deposit all waste materials in a closed container at the conclusion of each service is a violation of OAR 331-220-0000(19) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$300.

(2) Failing to store cigarette ashes, butts, etc. in a fire-retardant container is a violation of OAR 331-220-0000(22) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;

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(c) For 3rd offense: \$150.

(3) Failing to dispose of disposable material coming into contact with blood or

other bodily fluids in a sealable plastic bag is a violation of OAR 331-220-0030(1) and shall incur the following penalties:

(a) For 1st offense: \$100;

(b) For 2nd offense: \$300;

(c) For 3rd offense: \$500.

(4) Failing to dispose of disposable sharp-edged material coming into contact with blood or other bodily fluids in a sealable rigid container is a violation of OAR 331-220-0030(2) and shall incur the following penalties:

(a) For 1st offense: \$100;

(b) For 2nd offense: \$300;

(c) For 3rd offense: \$500.

(5) Failing to have sealable plastic bags and sealable rigid containers available for use at all times services are being performed is a violation of OAR 331-220-0030(3) and shall incur the following penalties:

(a) For 1st offense: \$100;

(b) For 2nd offense: \$300;

(c) For 3rd offense: \$500.

Stat. Auth.: ORS 676.992, 690.515

Stats. Implemented: ORS 690.560

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0080

Schedule of Penalties for Earlobe Piercing Facility Requirements

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

(1) Failing to use a piercing gun in accordance to manufacturer's design and specifications is a violation of OAR 331-220-0020(1), 331-220-0080(3), (4) and

(5) and shall incur the following penalties:

(a) For 1st offense: \$100;

(b) For 2nd offense: \$300;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(2) Failing to use a high-level disinfectant according to manufacturer's instructions to disinfect a piercing gun prior to use on a client, is a violation of OAR 331-220-0020(2) and shall incur the following penalties:

(a) For 1st offense: \$100;

(b) For 2nd offense: \$300;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(3) Failing to use single-use prepackaged sterilized ear-piercing studs for each client is a violation of OAR 331-220-0020(3) and OAR 331-220-0080(2) and shall incur the following penalties:

(a) For 1st offense: \$300;

(b) For 2nd offense: \$500;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(4) Failing to separate earlobe-piercing operation areas from other business activities is a violation of OAR 331-220-0020(6) and shall incur the following penalties:

(a) For 1st offense: \$50;

(b) For 2nd offense: \$100;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license.

(5) Failing to store disinfected piercing gun(s) from soiled or used guns, tools or instruments is a violation of OAR 331-220-0020(7) and shall incur the following penalties:

(a) For 1st offense: \$100;

(b) For 2nd offense: \$300;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

Stat. Auth.: ORS 676.992, 690.515

Stats. Implemented: ORS 690.560

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0090

Schedule of Penalties for Sterilization Requirements of Tools and Implements Violations

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

(1) Failing to sterilize all piercing instruments that come in contact with client's skin or are exposed to body fluids is a violation of OAR 331-220-0010(1) and shall incur the following penalties:

(a) For 1st offense: \$300;

(b) For 2nd offense: \$500;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(2) Using a piercing needle to provide more than a single piercing is a violation of OAR 331-220-0010(2) and shall incur the following penalties:

(a) For 1st offense: \$300;

(b) For 2nd offense: \$500;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(3) Failing to sterilize equipment using an approved mode or to use pre-packaged sterilized instruments is a violation of OAR 331-220-0010(3) and shall incur the following penalties:

(a) For 1st offense: \$100;

(b) For 2nd offense: \$300;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(4) Failing to conduct required tests of sterilization modes is a violation of OAR 331-220-0010(4) and shall incur the following penalties:

(a) For 1st offense: \$100;

(b) For 2nd offense: \$300;

(c) For 3rd offense: \$500.

(5) Failing to provide the results of the required tests on the sterilization

modes upon demand by a state inspector is a violation of OAR 331-220-0010(5)

and shall incur the following penalties:

(a) For 1st offense: \$100;

(b) For 2nd offense: \$300;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(6) Failing to properly clean instruments prior to sterilization process is a violation of OAR 331-220-0010(6) and shall incur the following penalties:

(a) For 1st offense: \$100;

(b) For 2nd offense: \$300;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(7) Failing to properly sterilize reusable instruments prior to use on clients is a violation of OAR 331-220-0010(7) and shall incur the following penalties:

(a) For 1st offense: \$300;

(b) For 2nd offense: \$500;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

Stat. Auth.: ORS 676.992, 690.515

Stats. Implemented: ORS 690.560

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0100

Schedule of Penalties for Cleanable/Non-Absorbent Surfaces Violations

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and sanitation rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the from imposing any other sanction

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authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

(1) Failing to have cleanable, non-absorbent surfaces on all equipment in all areas of a facility where services are performed is a violation of OAR 331-220-0000(8) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$300.

(2) Failing to use and maintain appropriate equipment in a facility is a violation of OAR 331-220-0000(5) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(3) Using products and/or instruments in a manner disapproved by the agency or the U.S. Food and Drug Administration is a violation of OAR 331-220-0000(6) and shall incur the following penalties:

- (a) For 1st offense: \$300;
- (b) For 2nd offense: \$500;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(4) Failing to disinfect surfaces or blood spills using a high level disinfectant is a violation of OAR 331-220-0000(9) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

Stat. Auth.: ORS 676.992, 690.515
Stats. Implemented: ORS 690.560

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0110

Schedule of Penalties for Clean Conditions Violations

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and sanitation rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

(1) Failing to keep a restroom located on the premises of a facility clean and sanitary is a violation of OAR 331-220-0000(18) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(2) Failing to keep the facility clean, orderly and the equipment in good repair is a violation of OAR 331-220-0000(7) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(3) Failing to keep disposable products in clean closeable containers is a violation of OAR 331-220-0000(10) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(4) Failing to keep or store sterilized instruments in a sterile package/container is a violation of OAR 331-220-0000(11) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(5) Failing to use clean single use products for each client is a violation of OAR 331-220-0000(13) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

Stat. Auth.: ORS 676.992, 690.515
Stats. Implemented: ORS 690.560

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0120

Schedule of Penalties for Client Health and Safety Violations

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and sanitation rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

(1) Failing to provide disposable drinking cups when beverages are served in a facility is a violation of OAR 331-220-0050(11) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(2) Failing to wear single-use disposable protective gloves while performing any service on a client is a violation of OAR 331-220-0050(8) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(3) Performing services while diagnosed with a communicable disease, open sores, bleeding lesions or condition in a transmittable form is a violation of OAR 331-220-0040(1) and/or OAR 331-220-0050(7) and shall incur immediate suspension until the disease or condition is no longer communicable.

(4) Treating any disease or knowingly serving any client having a communicable disease or condition is a violation of OAR 331-220-0040(2) and shall incur the following penalties:

- (a) For 1st offense: \$250;
- (b) For 2nd offense: \$500;
- (c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(5) Performing services without washing one's hands immediately before and after serving each client is a violation of OAR 331-220-0050(1) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(6) Failing to properly prepare client's skin prior to providing a service is a violation of OAR 331-220-0050(2) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(7) Failing to have an operatory or designated service area is a violation of OAR 331-220-0000(4) and/or OAR 331-220-0020(6) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(8) Failing to prepare skin prior to marking or use of an improper marking pen is a violation of OAR 331-220-0050(4) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

Stat. Auth.: ORS 676.992, 690.515
Stats. Implemented: ORS 690.560

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0130

Schedule of Penalties for Safe Working Conditions Violations

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and sanitation rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

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(1) Unless a waiver has been obtained, failing to meet the requirements of the Oregon Indoor Clean Air Act is a violation of OAR 331-210-0010(1)(b), 331-220-0000(1) and ORS 433.835 through 433.990 and will be referred to the Department of Human Services, Health Services.

(2) Having frayed electrical wiring or overloading the electrical circuits in a facility is a violation of OAR 331-210-0010(1)(b) and 331-220-0000(1) and will be referred to the appropriate authority:

(3) Having non-permitted pets in facilities, is a violation of OAR 331-220-

0000(21) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$300.

(4) Failing to wear eye goggles, shields or mask in performing services on a client where the probability of splattering is present is a violation of OAR 331-220-0050(9) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$300.

(5) Using a styptic pencil or alum solid to control blood flow is a violation of OAR 331-220-0050(5) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

Stat. Auth.: ORS 676.992, 690.515

Stats. Implemented: ORS 690.560

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0140

Schedule of Penalties for Chemical or Product Use and Storage Violations

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and sanitation rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

(1) Failing to store chemicals safely to avoid fire, explosion and/or bodily harm to clients and registrants is a violation of OAR 331-210-0010(1)(b) and 331-220-0000(1) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(2) Dispensing chemicals or substances in a manner that contaminates the unused portion is a violation of OAR 331-220-0050(3) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$300.

(3) Failure to store chemicals in a labeled closed container is a violation of OAR 331-220-0000(12) and shall incur following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$300.

Stat. Auth.: ORS 676.992, 690.515

Stats. Implemented: ORS 690.560

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0150

Schedule of Penalties for Required Information and Client Records

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

(1) Failure to post in public view required disclosure statement of risks is a violation of OAR 331-210-0010(1)(e) and 331-215-0030(2) and shall incur the following penalty:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$500;

(c) For 3rd offense: \$1,000.

(2) Failure to post agency's address and procedure for filing a complaint is a violation of OAR 331-210-0010(1)(f) and 331-215-0030(3) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$500;
- (c) For 3rd offense: \$1,000.

(3) Failure to properly complete client records or include the required information is a violation of OAR 331-220-0060(1) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(4) Failure to maintain complete client records at the facility premises is a violation of OAR 331-220-0060(3) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license.

(5) Failure to provide required pre-service information to the client is a violation of OAR 331-210-0010(1)(g) and 331-220-0060(4) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$1,000.

(6) Failure to provide required aftercare information both verbally and in writing to the client is a violation of OAR 331-210-0010(1)(g), 331-220-0050(6) and 331-220-0060(4) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$1,000.

Stat. Auth.: ORS 676.992, 690.515

Stats. Implemented: ORS 690.560

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

331-225-0160

Schedule of Penalties for Performing Prohibited Services

The Health Licensing Office has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and sanitation rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply. Imposition of a civil penalty under the following schedule does not preclude the agency from imposing any other sanction authorized by law, including refusing to issue a facility license or technician registration revocation, suspension or probation:

(1) Piercing other than the earlobe with a piercing gun is a violation of OAR 331-220-0080(3) and shall incur the following penalty:

- (a) For 1st offense: \$500;
- (b) For 2nd offense: \$1,000;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(2) Providing a piercing service that is prohibited is a violation of OAR 331-220-0080 and ORS 676.612(1)(j) and shall incur the following penalty:

- (a) For 1st offense: \$1,000;
- (b) For 2nd offense: \$1,000;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

(3) Using personal client jewelry for initial piercing is a violation of OAR 331-220-0080(2) and shall incur the following penalty:

- (a) For 1st offense: \$500;
- (b) For 2nd offense: \$1,000;

(c) For 3rd offense: A penalty and/or the proposed revocation, suspension or refusal to issue a license and/or registration.

Stat. Auth.: ORS 676.992, 690.515

Stats. Implemented: ORS 690.560

Hist.: HDLP 4-2001, f. & cert. ef. 11-1-01; HLO 7-2004, f. 6-29-04, cert. 7-1-04

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

Adm. Order No.: BOC 1-2004

Filed with Sec. of State: 6-29-2004

ADMINISTRATIVE RULES

Certified to be Effective: 7-1-04

Notice Publication Date: 3-1-04

Rules Amended: 817-005-0005, 817-010-0007, 817-010-0014, 817-010-0035, 817-010-0055, 817-010-0060, 817-010-0065, 817-010-0068, 817-010-0069, 817-010-0075, 817-010-0101, 817-010-0300, 817-015-0010, 817-015-0030, 817-015-0050, 817-015-0065, 817-020-0005, 817-020-0011, 817-020-0012, 817-020-0015, 817-020-0305, 817-030-0005, 817-030-0015, 817-030-0018, 817-030-0020, 817-030-0030, 817-030-0040, 817-030-0045, 817-030-0055, 817-030-0065, 817-030-0080, 817-030-0100, 817-035-0010, 817-035-0030, 817-035-0050, 817-035-0070, 817-035-0090, 817-035-0110, 817-040-0003, 817-060-0020, 817-060-0030, 817-080-0005, 817-090-0025, 817-090-0035, 817-090-0045, 817-090-0050, 817-090-0055, 817-090-0065, 817-090-0070, 817-090-0075, 817-090-0080, 817-090-0085, 817-090-0090, 817-090-0095, 817-090-0100, 817-090-0105, 817-090-0110, 817-090-0115, 817-100-0005, 817-120-0005

Rules Repealed: 817-001-0000, 817-001-0005, 817-001-0020, 817-001-0030, 817-035-0020, 817-055-0010, 817-070-0005, 817-090-0005, 817-090-0008, 817-090-0015, 817-110-0005

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

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

817-005-0005

Definitions

The following definitions apply to OAR chapter 817, divisions 1 through 120.

(1) “*Acceptable*” means satisfactory or adequate; fulfilling the needs or requirements of a specified rule or provision.

(2) “*Adequate ventilation*” means ventilation by natural or mechanical methods which removes or exhausts fumes, vapors, or dust to prevent hazardous conditions from occurring in accordance with OAR 437, Division 2 and/or to allow the free flow of air in a room in proportion to the size of the room and the capacity of the room.

(3) “*Affidavit of Licensure*” means an original document verifying licensing history and status, including information disclosing all unresolved or outstanding penalties and/or disciplinary actions. The document is issued and signed by the regulatory authority in the state which issued the license with an official seal or stamp affixed to the document; it is not the certificate or license form issued which authorizes the holder to practice.

(4) “*Agency*” means the Health Licensing Office. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(5) “*Approved*” means accepted by the Board of Cosmetology or to the appropriate entity.

(6) “*Article*” means any item used in the practice of barbering, hair design, facial technology or nail technology, including but not limited to neck-strips, neck dusters, towels or linens, and cloth or plastic capes.

(7) “*Barbering*” means the area of practice the Board has certified an individual to engage in as defined in ORS Chapter 690.005(2).

(8) “*Board*” means, pursuant to ORS 690.155 and 690.165, the entity that determines practice standards, education and training, and provides consultation to the agency on all disciplinary actions in accordance with ORS 690.167.

(9) “*Career school*” means, pursuant to ORS 345.010(4), an establishment licensed under ORS Chapter 345, to teach barbering, hair design, facial technology or nail technology, or any combination thereof

(10) “*Certificate*” means the document authorizing the holder to practice barbering, hair design, facial technology or nail technology (see, respectively, sections (7), (32), (37), and (49) of this rule).

(11) “*Certificate of Identification*” means authorization allowing a practitioner to perform services of barbering hair design, facial technology or nail technology outside of a licensed facility and in a client's residence or place of business.

(12) “*Chemical service*” means the use of any product which restructures or removes hair or changes the shape or appearance of skin, hair or nails.

(13) “*Clean*” means the absence of soil or dirt, or the removal of soil or dirt by washing, sweeping, clearing away, or any other appropriate method used as a preliminary process in rendering a sanitary condition as defined in subsection (62) of this rule.

(14) “*Cleanable*” means a surface that can be made clean as defined in subsection (13) of this rule.

(15) “*Commission*” means the Oregon Student Assistance Commission.

(16) “*Common area*” means an area of a facility which is used by all practitioners performing services, including, but not limited to reception areas, dispensing areas, sinks, shampoo bowls, hair dryers and hair dryer areas, and employee lounge areas.

(17) “*Communicable disease or condition*” means diseases or conditions diagnosed by a licensed physician as being contagious or transmittable which include but are not limited to the following:

- (a) Chickenpox;
- (b) Diphtheria;
- (c) Measles;
- (d) Meningococcal Disease;
- (e) Mumps;
- (f) Pertussis (whooping cough);
- (g) Plague;
- (h) Poison oak (a transmittable form of contact dermatitis);
- (i) Rubella;
- (j) Scabies;
- (k) Staphylococcal skin infection (boils, infected wounds);
- (l) Streptococcal infections (Strep throat);
- (m) Tinea (ring worm);
- (n) Tuberculosis.

(18) “*Deceit*” means to mislead others by attempting underhanded methods; to cause or influence others to accept as true or valid what is false or invalid; or, to give a false impression or appearance.

(19) “*Default loan status*” means a loan insured or guaranteed by the Oregon Student Assistance Commission which the borrower fails to pay in a satisfactory repayment manner as determined by the Commission and in accordance with federal regulations.

(20) “*Demonstration permit*” means an authorization as defined in ORS 690.005(6) to practice on a limited basis for a maximum of 30 consecutive days.

(21) “*Dermis*” means the underlying or inner layer of the skin; the layer below the epidermis; the corium or true skin, including papillary layer, capillaries, tactile corpuscles, melanin (pigment), subcutaneous tissue, adipose or subcutis tissue, arteries and lymphatics.

(22) “*Director*” means the individual who is responsible for the performance of the agency as defined in ORS 676.610. The director appoints all subordinate officers and employees to carry out the duties of the agency.

(23) “*Disinfect*” means to use a process to destroy harmful organisms, including bacteria, viruses, germs and fungi.

(24) “*Dispensing area*” means an area having non-porous surfaces and a sink with hot and cold running water where service preparations are conducted, such as mixing of chemicals, cleaning of tools and equipment, disposing of residues and rinsing parts of the body exposed to chemicals.

(25) “*Disposable towels*” means single-use paper towels or roller-type cloth towels furnished by laundries.

(26) “*EPA*” means Environmental Protection Agency, a branch of the Federal Government, which approves and registers chemical compounds and agents.

(27) “*Epidermis*” means the outermost layer of the skin; the outer epithelial portion of the skin, including stratum corneum, stratum lucidum, stratum granulosum, stratum spinosum (prickle cell layer), stratum mucosum and stratum germinativum.

(28) “*Equipment*” means those items needed to run a facility which includes but is not limited to waiting chairs, barber or style chairs, shampoo chairs, cabinets, sinks, shampoo bowls, stationary dryers, pedi bins or whirlpool foot spas, paraffin wax containers, and nail technology tables.

(29) “*Ethical*” means conforming to professional standards of conduct in all occupational practices and in accordance with OAR 817, division 120.

ADMINISTRATIVE RULES

(30) "Excessive" means to exceed the acceptable standard.

(31) "Exfoliate or exfoliation" means the process of sloughing off, removing, or peeling dead skin cells of the epidermis.

(32) "Facial technology" means the definition of facial technology in ORS Chapter 690.005(7), which includes the following practices:

(a) The application of lotions during electro-muscular stimulation;

(b) Removal of lanugo or superfluous hair by the application of wax or chemicals;

(c) Temporary removal of unwanted hair by an electrical tweezer device other than that codified in the law governing electrolysis.

(33) "Facility" means an establishment in which practitioners perform acts of barbering, hair design, facial technology or nail technology, or any combination thereof.

(34) "Field of practice" means one or more of these disciplines: barbering, hair design, facial technology and/or nail technology.

(35) "Fire retardant container" means an air-tight metal or other approved container recognized by a national testing lab for the use of disposing of chemical waste or storing linens with chemical residue.

(36) "Fraud" means the intentional act of deceiving or cheating; a willful violation (refer to ORS 646 "Trade Regulations and Practice").

(37) "Hair design" means the definition of Hair Design in ORS 690.005(10), includes the braiding of hair.

(38) "Health Licensing Office" means the agency.

(39) "High-level disinfectant" means a chemical agent, which has demonstrated tuberculocidal activity and is registered with the EPA.

(40) "Incompetency" means performance from which it may be concluded that the person either lacks or did not employ the knowledge and skill necessary to practice in an acceptable manner.

(41) "Independent Contractor" means an individual defined in ORS 690.005(11) who qualifies for a recognized business status under the provisions of ORS 670.600.

(42) "License" means a document to operate a facility as defined in ORS 690.005(12).

(43) "Licensed health care facility" means a facility as defined by ORS 442.015(16), such as a hospital, special inpatient care facility, rehabilitation center, center for the treatment of alcoholism or drug abuse, assisted living care or nursing facility, or psychiatric hospital, which is licensed by a state regulatory agency or local governmental unit for the purpose of providing health care services.

(44) "Low-level disinfectant" means a chemical agent which has demonstrated bactericidal, germicidal, fungicidal, and limited virucidal activity and is registered with EPA.

(45) "Manicuring" means services performed upon the nails of the hands as part of nail technology defined in ORS 690.005(13).

(46) "Manipulation" means, as referred to in ORS 690.005(7) and (13), the articulation or massage of the spine above the seventh (7th) vertebra, or of the hands or feet, for cosmetic purposes only and not for the treatment of disease or physical or mental ailments.

(47) "Materials and supplies" means those items which complement the use of tools, including but not limited to hair tints, bleaches, permanent wave solutions, tonics, hair oils, shampoos, rinses, disinfectants, and chemicals.

(48) "Misconduct" means performing in an unethical, unprofessional or dishonest manner; or, acts involving violence against persons.

(49) "Nail Technology" means the definition of nail technology in ORS 690.005(13), which includes the following:

(a) The application and removal of artificial nails;

(b) The application of mini-art work, etching or imprinting on nails.

(50) "Negligence" means failure to exercise care in the safety and sanitary methods relating to ORS Chapter 690.

(51) "Non-absorbent" means incapable of absorbing or entrapping water or other liquids.

(52) "Official transcript" means an original document certified by the career school indicating hours and types of course work, examinations and scores that the student has completed, which has been mailed by USPS or other recognized mail service provider directly to the agency by the career school in a sealed envelope, or authorized transcript transmitted directly to the Health Licensing Office in a manner approved by the board.

(53) "Pedicuring" means services performed upon the nails of the feet as part of nail technology defined in ORS 690.005(13).

(54) "Permit" means either a demonstration permit as defined in subsection (20) or a temporary facility permit as defined in subsection (69) of this rule.

(55) "Practitioner" means any person whom the Board has certified to perform services in one or more field(s) of practice on the public.

(56) "Premises" means the entire area of the facility, which the Board has licensed and designated as a facility.

(57) "Probation" means continuation of certification, licensure, registration and/or permit under conditions set by the agency.

(58) "Public view" means open to view and easy for the public to see.

(59) "Reasonably accessible" means not more than three minutes travel time from any work location.

(60) "Reciprocity" means that an applicant, holding an active certificate or license in another state, meets the applicable qualifications and requirements pertaining to minimum competency through satisfactory completion of a national written and practical examination recognized and/or approved by the Board.

(61) "Registration" means an authorization to practice in barbering, hair design, facial technology and/or nail technology as an independent contractor.

(62) "Sanitary" means free of agents of infection, disease, or infestation by insects and vermin and free of soil, dust, or foreign material; referring to cleanliness.

(63) "Sanitized" means rendered free of soil, dust, foreign material, and agents of disease or infestation by insects or vermin through the use of effective cleaning.

(64) "Sanitizing container" means a receptacle, holding a disinfecting agent, which is large and deep enough to submerge the tool(s) or implement(s) or portion(s) thereof, which are to be disinfected.

(65) "Sharp edged or pointed, non-electrical tools and implements" means those items which may on occasion pierce or cut the skin and draw blood, includes razors, cuticle nippers, cuticle pushers, nail clippers, tweezers, comedone extractors, shears, and metal nail files.

(66) "Soiled" means an article that has been used and has not been cleaned or disinfected before use on the next client.

(67) "Supervise" means to oversee, direct, or be in charge of the activities or the flow of work in a facility.

(68) "Suspend" means, as used in ORS 690.075, to place a certificate, license, registration and/or permit in an inactive status for an unspecified period of time due to disciplinary action taken under ORS 25.750 to 25.783, ORS 305.385, ORS 348.393 to 348.399, or ORS 690.075.

(69) "Temporary facility permit" means an authorization as defined in ORS 690.005(17), not to exceed 30 consecutive days.

(70) "Tools and implements" means all portable instruments and accessories, which the practitioner can carry to use in the performance of services on clients, including but not limited to combs, shears, clippers and yoyettes.

(71) "Water supply" means a source of water other than that provided by sinks located in restrooms.

(72) "Wash basin/shampoo bowl" means a basin or similar vessel used exclusively for washing of hands, arms, face and head.

(73) "Work area" means an area where services are performed and preparations are conducted including but not limited to shampoo area, work stations and dispensing area.

Stat. Auth.: ORS 690.165 & 690.205(1)

Stats. Implemented: ORS 690.165 & 690.105(1)

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1982, f. & ef. 1-29-82; BH 2-1982, f. & ef. 3-31-82; BH 1-1983(Temp), f. & ef. 10-4-83; BH 4-1984, f. & ef. 12-7-84; Renumbered from 817-010-0002; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 2-1996, f. 6-28-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-010-0007

Compliance with All Applicable Regulations

(1) Practitioners, facility owners and independent contractors shall observe and be subject to all Department of Human Services, Health Services, and other city, county and state regulations pertaining to public health and safety. Compliance with building, state fire, plumbing, and electrical regulations is required.

(2) In addition, when an employee/employer relationship exists, practitioners shall comply with ORS 654, the Oregon Safe Employment Act.

Stat. Auth.: ORS 690.165

Stats. Implemented: ORS 690.165 & 654

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 3-1994, f. 6-23-94, cert. ef. 7-1-96; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-010-0014

Water Supply Requirements and Standards

(1) Facility water supplies shall have a minimum of 20 pounds pressure per square inch in accordance with the **State Plumbing Code**.

ADMINISTRATIVE RULES

(2) The quality and construction of facility water supplies shall meet the requirements of ORS Chapter 448 and the **State Plumbing Code**, OAR 918, Division 750.

(3) All facilities shall have an adequate supply of both hot and cold running water and wash basins on the facility premises. Sinks located in the restroom do not qualify as a water source for the facility premises.

(4) Practitioners shall have immediate access to a supply of hot and cold running water.

(5) Hand washing accommodations shall be provided in work areas where the employees are exposed to hazardous materials, which may have a harmful effect on or be absorbed through the skin if the contamination is not removed.

(6) Washing accommodations shall be maintained in a clean and sanitary condition.

(7) Hand soap or similar cleansing agents shall be provided.

(8) Individual towels of cloth or paper shall be provided. Air blowers for drying the hands may be substituted for towels.

(9) Use of bar soap or a common towel is prohibited.

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

Stat. Auth.: ORS 690.205

Stats. Implemented: ORS 448

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; Renumbered from 817-010-0016(1) & (2); BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-010-0035

Towels or Linens

(1) Clean towels or linens shall be used for each client.

(2) When using linens as arm cushions during nail technology service, the practitioner may use a protective disposable cover on the linen towel to prevent contact with the client.

(3) Clean towels and linens shall be stored in a clean area.

(4) Each facility or practitioner shall provide closable containers large enough and sturdy enough to store all soiled towels or linens after use. Chemically soiled towels or linens shall be stored in fire-retardant containers.

(5) Used towels shall be laundered either by regular commercial laundering or by a non-commercial laundering process, which includes use of commercial laundry detergent manufactured for the purpose of cleaning clothes, linens or other washable fabric, and immersion in hot water during the hot water wash/rinse operation.

Stat. Auth.: ORS 690.205

Stats. Implemented: ORS 690.205

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-010-0055

Materials in Contact with a Client

All chemical substances used within a field of practice shall be dispensed from containers in a manner to prevent contamination of the unused portion.

Stat. Auth.: ORS 690.205

Stats. Implemented: ORS 690.205

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-010-0060

Refuse and Waste Material

(1) All chemical waste material shall be deposited in a closed container at the conclusion of each service and then disposed of in a fire-retardant container at the close of each business day.

(2) All waste related to the performance of services shall be deposited in a covered container to avoid the potential for cross contamination through release of or exposure to infectious waste materials.

(3) All waste unrelated to performance of services shall be deposited in a waste disposal container. Containers located in the reception area, which do not contain waste relating to performance of services, are exempt from having covers.

(4) Any waste disposal container used to store cigarette ashes, butts, etc., shall be a metal or fire-retardant container.

(5) Outer surfaces of waste disposal containers shall be kept clean.

(6) Any disposable material coming into contact with blood and/or body fluids such as discharge from pustules, pimples, and sebaceous glands, shall be disposed of in a sealable plastic bag (separate from sealable trash or garbage liners) or in a manner that not only protects the licensee

and the client but also others who may come into contact with the material such as sanitation workers.

(7) Any disposable sharp objects that come in contact with blood or other body fluids shall be disposed of in a sealable rigid (puncture-proof) container that is strong enough to protect the practitioner, client and others from accidental cuts or puncture wounds that could happen during the disposal process.

(8) Practitioners and/or facility owners shall have both sealable plastic bags and sealable rigid containers available for use at all times services are being performed.

Stat. Auth.: ORS 690.205

Stats. Implemented: ORS 690.205

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 2-1982, f. & ef. 3-31-82; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-010-0065

Requirements and Standards

(1) All tools and implements, which come in direct contact with a client, shall be disinfected or disposed of after use.

(2) The Board shall authorize the use of disinfecting agents provided those agents are Environmental Protection Agency (EPA) registered and meet the criteria set forth in OAR 817-005-0005(39) and (44).

(3) Holders of a facility license, independent contractor registration, or certificate of identification shall provide and maintain adequate disinfecting or sterilizing equipment for the number of practitioners, usage requirements, and volume of business.

(4) Optional sterilization equipment used in lieu of disinfectants shall be checked annually to ensure it is reaching the temperature and/or pressure required by manufacturer's instructions.

(5) When used according to the manufacturer's instructions, each of the following is an approved method s of disinfecting tools and implements:

(a) Complete immersion in the disinfecting solution of the object(s) or portion(s) thereof to be disinfected;

(b) Steam sterilizer, registered and listed with the U.S. Food and Drug Administration; or

(c) Dry heat sterilizer or autoclave, registered and listed with the U.S. Food and Drug Administration.

(6) All disinfecting solutions and/or agents shall be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business.

(7) Nail files, cosmetic sponges, buffer blocks, sanding bands or sleeves, orangewood sticks, and disposable nail bits which have not been approved by the Board for disinfection and reuse, shall be given to the client or discarded after use on each client. Presence of these articles in the work area (facility) shall be prima facie evidence of use.

(8) Protective gloves that are not cleaned with soap and water and disinfected shall be disposed of after use on a client (refer to provisions of OAR 817-015-0030(3) and (5)).

Stat. Auth.: ORS 690.205

Stats. Implemented: ORS 690.205

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 2-1980, f. & ef. 5-29-80; BH 2-1982, f. & ef. 3-31-82; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 4-2001(Temp), f. & cert. ef. 11-1-01 thru 4-29-02; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-010-0068

Disinfecting Non-Electrical Tools and Implements

All tools and implements used within a field of practice shall be disinfected before use on each client. The method for disinfecting non-electrical tools and implements will be as outlined below.

(1) To disinfect all non-electrical tools and implements first:

(a) Remove all hair and/or foreign material;

(b) Clean thoroughly with soap or detergent and water;

(c) Rinse thoroughly with clear, clean water; and

(d) Complete process as outlined in section (2) or (3) of this rule; or

(e) Sterilize, using one of the approved methods listed in OAR 817-010-0065(5)(b) or (c).

(2) For all tools and implements without sharp edges or points, including but not limited to combs, brushes, rollers, rods, etc., totally immerse according to manufacturer's instructions in a solution containing 1,000 parts per million (ppm) of a commercial quaternary ammonium compound or other low-level disinfectant used according to the manufacturer's instructions.

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(3) For all tools and implements with sharp edges or points, as defined in OAR 817-005-0005(65) totally, immerse in a high-level disinfectant used according to the manufacturer's instructions.

Stat. Auth.: ORS 690.165 & 690.205

Stats. Implemented: ORS 690.165 & 690.205

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 2-1980, f. & ef. 5-29-80; BH 2-1982, f. & ef. 3-31-82; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-010-0069

Disinfecting Electrical Tools and Implements

(1) All electrical tools and implements, with the exception of clipper blades, shall be disinfected before each use. The method is as follows:

- (a) Remove hair and/or all foreign matter;
- (b) Disinfect with a low-level disinfectant used according to the manufacturer's instructions.

(2) Electrical clipper blades shall be disinfected before each use. The method is as follows:

- (a) Remove hair and/or all foreign matter;
- (b) Completely saturate clipper blade with a high-level disinfectant solution, spray, or foam used according to the manufacturer's instructions.

(3) Electrical clipper blades may be sterilized, using one of the approved methods listed in OAR 817-010-0065(5)(b) or (c).

Stat. Auth.: ORS 676.605, 690.165, 690.205

Stats. Implemented: ORS 676.605, 690.165, 690.205

Hist.: BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-010-0075

Storage of Tools and Implements

(1) New and/or disinfected and cleaned tools and implements shall be stored separately from all others.

(2) Roller-storage receptacles and contents shall be clean and free of foreign material.

(3) Storage drawers for clean tools and implements shall be clean, free of hair and used only for clean tools and implements.

(4) Storage cabinets, work stations and vanities shall be kept clean.

Stat. Auth.: ORS 676.605, 690.165 & 690.205

Stats. Implemented: ORS 676.605, 690.165 & 690.205

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 4-2001(Temp), f. & cert. ef. 11-1-01 thru 4-29-02; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-010-0101

Equipment

(1) The surface of all equipment, including but not limited to backbars shall be of cleanable non-absorbent material. This requirement does not apply to the reception area of a facility where services are not performed.

(2) Shampoo bowls and sinks shall be clean and free of hair and residue.

(3) All equipment shall be clean and in good repair.

(4) A high-level disinfectant or bleach solution, used according to the manufacturer's instructions, shall be used to disinfect surfaces contaminated by blood or bodily fluids.

(5) Foot spa equipment shall be cleaned and disinfected with a high-level disinfectant as defined in OAR 817-005-0005(39) after use on each client.

Stat. Auth.: ORS 676.605, 690.165, 690.205

Stats. Implemented: ORS 676.605, 690.165, 690.205

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BOC 4-2001(Temp), f. & cert. ef. 11-1-01 thru 4-29-02; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-010-0300

Variations

Upon application, the Board of Cosmetology may grant a variance from requirements of its safety and infection control rules as follows:

(1) Where it is demonstrated to the satisfaction of the Board that strict compliance with the rules would be highly burdensome or impractical due to special conditions or cause;

(2) Where the Board finds that the public or private interest in the granting of a variance clearly outweighs the interest of the application of uniform rules; and

(3) Where, in the opinion of the Board, such alternative measures will provide adequate public health and safety protection.

Stat. Auth.: ORS 676.605, 690.165, 690.205

Stats. Implemented: ORS 676.605, 690.165, 690.205

Hist.: BH 2-1982, f. & ef. 3-31-82; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-015-0010

Blood-Borne Diseases

A practitioner providing service or working in a facility after diagnosis of immunodeficiency disease or condition or Hepatitis B, C, or D shall observe and follow all current Centers for Disease Control (CDC) standards for public service workers regarding personal protection equipment and disposal of blood or bodily fluid contaminated articles, tools and equipment. These standards shall also apply to practitioners or employees providing services to clients who have been diagnosed with having an immunodeficiency disease or condition or Hepatitis B, C, or D. It is the position of the Board that human immunodeficiency virus (HIV) is the cause of acquired immunodeficiency syndrome (AIDS) and related immunodeficiency conditions. This virus, as well as Hepatitis B virus (HBV), Hepatitis C virus (HCV) and Hepatitis D virus (HDV), may be transmitted by sharp instruments contaminated by blood or other body fluids, if proper precautions are not followed.

Note: As the carriers of these viruses may have no symptoms, the most prudent course to follow is to treat body fluids from all persons with the same high standards of caution and to rigorously follow established safety and infection control practices as required by the law and rules of the Board. There is no published evidence to support casual transmission of HIV, by sneezing or touching, even in close household settings involving AIDS patients and family members caring for them at home. Because HIV is not spread by casual means and because of the inadequacies of the HIV antibody test, there is no reason for the Board to require blood tests prior to certification and/or licensure. Good hand washing after glove removal and between each client is imperative and the most important procedure for prevention of all infections, including HIV. Uniform body fluid precautions are ample to prevent transmission of HIV or HBV, HCV and/or HDV in a facility setting.

Stat. Auth.: ORS 676.605, 676.615, 690.165

Stats. Implemented: ORS 676.605, 676.615, 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; Renumbered from 817-010-0130(1); BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; Former section (3) renumbered to 817-010-0135(4); BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-010-0125; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-015-0030

Serving Clients

(1) Practitioners shall observe and follow thorough hand washing with soap and water or other alternative hand-washing products, such as gel, aerosol spray, foam, or pre-packaged hand wipes, immediately before and after serving each client as needed to prevent cross contamination and/or transmission of body fluids, infections or exposure to service-related wastes or chemicals.

(2) Practitioners who have visible open sores or bleeding lesions on their hands or arms shall not have client contact until the lesions have healed to the scab phase and shall cover them with protective gloves and/or impervious bandages prior to contact with clients.

(3) Practitioners shall wear single-use disposable or cleaned and disinfected protective gloves when performing service or affecting a procedure that routinely involves body fluid exposure, such as during a facial where blood, pus, or weeping of the skin may be present or is likely to occur during the service.

(4) Practitioners shall wear eye goggles, shields and/or a mask if splattering is likely to occur while services are being performed.

(5) Practitioners performing service on clients with skin conditions that are wet or weeping shall wear single-use protective gloves. Single-use disposable gloves shall be used and discarded after use with each client.

(6) Disposable materials that come in contact with blood and/or body fluids, such as discharge from pustules, pimples, and sebaceous glands, or are used in cleaning blood spills shall be discarded according to provisions of OAR 817-010-0060 to protect the practitioner, clients and others who may come into contact with the material.

(7) Head lice may be treated at the discretion of the practitioner and/or facility owner. Compliance with OAR chapter 817, division 10 Safety and Infection Control Rules: Facility Standards, shall be observed and followed.

Stat. Auth.: ORS 676.605, 690.165, 690.205

Stats. Implemented: ORS 676.605, 690.165, 690.205

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; Renumbered from 817-010-0130(2); BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; Renumbered from 817-010-0125; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-010-0135; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

ADMINISTRATIVE RULES

817-015-0050

Exfoliation Services; Microdermabrasion

(1) Facial technologists, within their field of practice, may use only those chemicals or products, natural or synthetic, and manual mechanical devices designed for surface skin treatments, that limit action to the stratum corneum layer of the epidermis. Refer to OAR 817-005-0005(27).

(2) Facial technologists, within their field of practice, shall not use chemicals or products, natural or synthetic, manual and mechanical devices, which act on or may create damage to skin layers below the stratum corneum, defined in OAR 817-005-0005(21) and (27).

(3) Chemicals prohibited for use shall include, but not be limited to, the following:

(a) Unbuffered alpha-hydroxy acids at concentrations greater than 15 percent;

(b) Buffered concentrations of alpha-hydroxy acids of 10 to 30 percent where pH is less than 3;

(c) Any concentration or formulation of alpha-hydroxy acids greater than 30 percent;

(d) Any concentration or formulation of trichloroacetic acid (TCA) formulation containing phenol or resorcinol, or salicylic acid which acts on living tissue.

(4) Facial technologists shall have received training and education in the safe and effective use of each system of skin care used to perform services. Evidence of training in the use of products or devices referred to in this rule section must be provided to the agency upon request.

(5) All exfoliant products or formulations, and manual or mechanical devices shall be used in accordance with manufacturers recommendations.

Stat. Auth.: ORS 676.605, 690.165

Stats. Implemented: ORS 676.605, 690.165

Hist.: BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-015-0065

Required Nail Technology Client Records

(1) Facility owners and independent contractors providing manicuring or pedicuring services must maintain client records to ensure basic client information is available to safeguard the health and well being of both the client and practitioner.

(2) The record may be in a form convenient to obtain the required basic client information, such as pre-printed paper form or index card, daily sign-in sheet, personal computer record, hand-held Personal Digital Assistant (PDA), or other format. Basic client information includes the client's name, address, telephone number and date of service. Client information should be legible.

(3) The record may also contain the name and registration number of the nail technician providing service, special instructions or notations that the technician believes to be pertinent to the client's medical or skin condition, such as sensitivities to medicines or topical solutions, bleeding disorders or complications during service(s).

(4) Facility owners and nail technicians may obtain advice from physicians regarding medical information needed to safeguard client and technician.

(5) Records must be kept at the facility premises for a minimum of two years and must be made available immediately upon request from an enforcement officer of the Health Licensing Office.

(6) A client who refuses to provide required basic personal information, listed in subsection (2) of this rule, must sign a waiver form to release the nail technician from failure to obtain required information. The signed waiver must be retained on file in the same manner as listed in subsection (5) of this rule for client records.

Stat. Auth.: ORS 676.605, 690.165

Stats. Implemented: ORS 676.605, 690.165

Hist.: BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-020-0005

Issuance of Facility Licenses

(1) A facility license may be issued if the applicant:

(a) Is at least 18 years of age, if the applicant is a natural person, and meets requirements of ORS 690.055;

(b) Has registered with the Corporations Division and received an assumed business name prior to applying for a facility license (unless doing business under the full name of the owner);

(c) Files an application on prescribed forms with the agency and pays the required application and license fees. If the facility is owned by a cor-

poration, the application must state the name of and the form must be signed by the corporate officer;

(d) Complies with all applicable rules and regulations of the Board and other state agencies; and

(e) Certifies the application information is correct.

(2) The premises where services are performed solely by independent contractors who are registered by the agency shall be required to be licensed as a facility.

Stat. Auth.: ORS 676.605, 690.055, 690.165

Stats. Implemented: ORS 676.605, 690.055, 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-020-0011

Facility License Criteria

(1) Applicants for a facility license shall:

(a) Provide a map or directions to the facility if it is located in a rural or isolated area.

(b) Meet the specifications for building, fire and plumbing codes as specified in OAR 817-010-0007 and comply with exit and fire standards established by the Building Codes Agency and Office of the State Fire Marshal.

(2) Applicants for a facility license located within a residence shall:

(a) Have an identifying house number or a sign, which is easily visible from the street and indicates the location of the facility;

(b) Maintain equipment the Board requires for all facilities;

(c) Comply with all applicable regulations in accordance with OAR 817-010-0007;

(d) Provide an entrance to the facility that is separate from the entrance to residential living areas; and

(e) Maintain separation between the residential living area and facility by solid walls extending from floor to ceiling, with connecting doors kept closed during hours the facility is in operation and/or serving clients as required in ORS 690.205(2).

(3) Facilities shall comply with the administrative rules of the Board concerning health, safety, and infection control pursuant to ORS 690.055(1)(b).

(4) The cleanliness and sanitation of any common area used by or provided for separately licensed facilities or independent contractors located at one premises is the responsibility of each registration holder on that premises.

(5) Violations found in a common area will be cited against all holders of facility licenses and independent contractor registrations at the premises, unless a contractual agreement exists which indicates specific responsibility for the cleanliness of a common area within the premises.

Stat. Auth.: ORS 676.605, 690.055, 690.165, 690.205

Stats. Implemented: ORS 676.605, 690.055, 690.165, 690.205

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-020-0012

Criteria for Operating a Facility

A facility owner or license holder shall:

(1) Allow the agency's enforcement officer to inspect the facility when it is open for business.

(2) Abstain from obstructing or hindering the normal progress of the inspection, threatening or exerting physical harm, or enabling another individual or employee to impede the inspection process.

(3) Contact the agency in writing to make arrangements for an inspection if the agency has been unable to perform an inspection after one year because the facility was closed.

Stat. Auth.: ORS 690.165 & 690.225

Stats. Implemented: ORS 690.165 & 690.225

Hist.: BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-020-0015

Facility Licensing Requirements

(1) A facility owner or license holder shall meet the requirements of a new facility (refer to OAR 817-020-0011) and submit a new facility application and required fees when any of the following conditions exist:

(a) A facility is purchased from the current or previous owner, partnership or corporation. Facility licenses are not transferable from person-to-person or from business-to-business;

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(b) There is a change in the legal ownership, partnership or holding of a facility regulated under ORS 690 and OAR 817, such as:

(A) A partner(s) or co-owner(s) is added to the existing facility license; or

(B) A partner(s) or co-owner(s) is removed from the existing facility license, including change in ownership status due to death of facility owner(s), or spouse listed as a co-owner on the agency's records.

(c) An existing facility moves or relocates to a new physical address. Facility licenses are not transferable from location-to-location.

(2) Facility license holders who close a business regulated under ORS 690 and OAR 817 shall:

(a) Inform the agency in writing within five calendar days of the closure of the facility;

(b) Inform the agency in writing prior to reopening the facility, when the same individual listed as the owner on file with the agency reopens the facility while the license is still current.

Stat. Auth.: ORS 690.055 & 690.165

Stats. Implemented: ORS 690.055 & 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 2-1996, f. 6-28-96, cert. ef. 7-1-96;

Renumbered from 817-020-0025 & 817-020-0030; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-020-0305

Licensed Health Care Facility

(1) Health care facilities licensed under ORS 442 are exempt from facility license requirements as stated in ORS 690.025(2) if services are provided to residents only.

(2) No person acting individually or jointly with any other person shall establish, conduct, maintain, manage or operate a facility defined in ORS 690.005(8) without a license issued by the Board of Cosmetology. Licensed health care facilities defined in ORS 442.015(16) shall comply with the Board's licensing, safety and infection control rules if services regulated under ORS 690 are administered to the general public

(3) The agency may inspect those areas of a licensed health care facility where services are performed if alleged licensing or safety and infection control violations are reported. The agency may investigate the facility in response to a complaint. The agency may report the safety and infection control conditions and results of inspection or investigation to the Department of Human Services, Health Services and/or other appropriate agencies.

Stat. Auth.: ORS 690.015, 690.025, 690.035, 690.055, 690.165, 690.205 & 690.225

Stats. Implemented: ORS 690.015, 690.025, 690.035, 690.055, 690.165, 690.205, 690.225 & 442

Hist.: BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-030-0005

Qualification and Training Requirements

To obtain an Oregon certificate in one or more fields of practice, individuals must complete required application documentation prescribed by the Board, provide satisfactory evidence of meeting certification requirements, which includes qualifying criteria listed in one of the following certification pathways, and submit payment of required fees.

CERTIFICATION PATHWAY ONE

(1) Graduate from Oregon Licensed Career School: Applicants must meet the education and training requirements in effect at the time of application. Applicants shall complete and pass courses required by the Oregon Department of Education, Private Career Schools, in one or more of the following educational programs offered through an Oregon licensed career school, and must also pass a written and practical examination approved or recognized by the Board of Cosmetology in accordance with OAR 817-030-0040:

(a) Hair design — 1,450 hour course;

(b) Barbering — 1,100 hour course;

(c) Facial technology — 250 hour course;

(d) Nail technology — 350 hour course;

(e) Mandatory completion of a 150 hour safety and infection control course and a 100 hour career development course in addition to any one or more of the approved programs listed in (a) through (d) of this rule. The Board recognizes a final practical examination, prescribed by the Department of Education, Private Career Schools in collaboration with the Board, which establishes standard examination criteria and testing protocols, as its qualifying practical certification examination. Authorized Oregon licensed career school personnel conduct the practical examination.

(2) Non-Credentialed Applicants from Another State or Country: Applicants who have completed schooling requirements established by a regulatory authority in another state or country must submit all required application documentation (OAR 817-030-0015) to the agency for evaluation

and approval by the Oregon Department of Education, Private Career Schools (ORS 345.430). Approved applicants will be required to take the Oregon qualifying written and practical examination (OAR 817-030-0040) if the following criteria apply:

(a) Certification or licensure in another state or country was not attained;

(b) Reciprocity requirements listed in subsection (3) of this rule have not been met.

CERTIFICATION PATHWAY TWO

(3) Oregon Certification by Reciprocity: The Board recognizes other states', and at its discretion may recognize other countries', education, examination and licensing requirements. Applicants currently certified or licensed in one or more fields of practices in another state or country will qualify for Oregon certification without examination if requirements of OAR 817-030-0015(1) and (2)(c) and the following criteria have been met:

(a) The applicant shall arrange for the originating regulatory authority to forward directly to the agency a current and original "Affidavit of Licensure" document, signed by an authorized representative of the regulatory authority and affixed with an official seal or stamp to the document. The document may be electronically transmitted to the agency from the originating state. The applicant is responsible for payment of any service fee the originating state may assess for producing the affidavit.

(b) Completion of a state-approved board examination for certification/licensure and graduation from a licensed cosmetology school.

(4) Applicants holding current certification/licensure from out-of-state who do not qualify for Oregon certification by means of reciprocity as specified in subsection (3) of this rule must complete and pass the qualifying examination(s) required in OAR 817-030-0005(1) and 817-030-0040.

Stat. Auth.: ORS 690.035, 690.046, 690.165

Stats. Implemented: ORS 690.035, 690.046, 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1981, f. & ef. 10-1-81; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00;

BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-030-0015

Application Requirements

(1) Applicants must meet all of the requirements of OAR 331-030-0000 in addition to the provisions of this rule.

(2) Applicants must provide, or cause to be delivered to the agency, prescribed documentation verifying training and/or licensure, according to one of the following qualification pathways. Refer to OAR 817-030-0005:

(a) Official transcript / Oregon Career School: completed official transcript, defined in OAR 817-005-0005(52), issued by an Oregon licensed career school of barbering, hair design, facial or nail technology, and completed original official transcript of practical examination, signed by the authorized school personnel proctoring the Board sanctioned examination, certifying that criteria for the practical examination was met and that the applicant satisfactorily demonstrated minimum competencies established by the Department of Education, Private Career Schools, in collaboration with the Board.

(b) Out-of-state non-credentialed: documentation of schooling and/or training experience, including official transcript from the licensed school mailed or transmitted directly to the agency from the originating state's regulatory authority, work study or apprenticeship records.

(c) Reciprocity: current and original signed and sealed or stamped Affidavit of Licensure document issued upon the request of applicant certified or licensed in another state and mailed directly to the agency by the originating state, and if applicable, verification of a Board-approved examination.

(3) Any Affidavit of Licensure document not mailed directly to the agency from the originating state will invalidate qualification for certification, scheduling and examination.

(4) Application documentation required for an examination and certification must be submitted to the Health Licensing Office in English. If documents require translation, a copy of the official document(s), in the original language, must be submitted with the written translation in English.

Stat. Auth.: ORS 676.615, 690.035, 690.165

Stats. Implemented: ORS 676.615, 690.035, 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1981, f. & ef. 10-1-81; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; Renumbered from 817-030-0010; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2001(Temp), f. 1-31-01, cert. ef. 2-1-01 thru 7-29-01; BOC 3-2001, f. 3-30-01, cert. ef. 4-1-01; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

ADMINISTRATIVE RULES

817-030-0018

Examination for Reinstatement of Certification; Upgrading Certification

(1) To reinstate a certificate, which has expired beyond two years, an applicant must meet the requirements of ORS 690.085(5):

- (a) Submit a completed application form prescribed by the Board with the applicant's expired certificate number;
- (b) Pay the required application, examination and certificate fees; and
- (c) Satisfactorily pass both a Board approved written and Department of Education approved/board sanctioned practical examination in the areas qualified.

(2) To add a field of practice to an existing certificate, practitioners must:

- (a) Submit a completed application form prescribed by the Board with the applicant's current certificate number;
- (b) Submit the completed official transcript issued by the appropriate Oregon licensed career school;
- (c) Pay the required application and examination fees;
- (d) Pay the required certificate fee for upgrading the initial certificate;
- (e) Satisfactorily pass a Board approved written examination;
- (f) Satisfactorily pass a practical examination from an Oregon licensed career school within two years from the date of application; and
- (g) Surrender the current certificate, upon satisfactorily completing requirements for adding a field of practice to the practitioner's certificate.

Stat. Auth.: ORS 690.035, 690.046, 690.048, 690.165

Stats. Implemented: ORS 690.035, 690.046, 690.048, 690.165

Hist.: BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-030-0020

Examination Requirements

(1) The agency will conduct examinations for certification. A schedule of examination dates and times shall be available upon request. The agency reserves the right to alter or adjust examination dates, times and locations as it deems necessary to meet emergency situations and will notify applicants and schools in advance whenever possible.

(2) Applicants may request special examination accommodation according to requirements of OAR 817-030-0080. Special examinations will be scheduled at a date and time determined by the Health Licensing Office Director.

(3) Applicants will qualify for examination upon compliance with relevant provisions of OAR 817-030-0005 and 817-030-0015. Applicants will not be allowed to take the examination until all requirements for examination have been met. If documentation is incomplete or incorrect, applicants will not be allowed to sit for the examination.

(4) Applicants shall present photographic identification, such as a driver's license, and their original Social Security card to the examination proctor.

Stat. Auth.: ORS 676.615, 690.065, 690.165

Stats. Implemented: ORS 676.615, 690.065, 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-030-0030

General Information about the Examination

(1) Taking notes, textbooks or notebooks into the examination area is prohibited.

(2) Electronic equipment and communication devices, such as personal computers, pagers and cellular telephones or any other devices deemed inappropriate by agency staff, are prohibited in the examination area. Taking such items into the examination area will invalidate the examination and result in forfeiture of the examination fees.

(3) An applicant will be immediately disqualified during or after the examination for conduct that interferes with the examination. Such conduct includes:

- (a) Giving or receiving aid, directly or indirectly during the examination process;
- (b) Obtaining help or information from notes, books, or other individuals or sources to answer questions;
- (c) Removing or attempting to remove any secure examination-related information, notes or materials from the examination site;
- (d) Failing to follow directions relative to the conduct of the examination;
- (e) Endangering the health of a person involved in the examination; and

(f) Exhibiting behavior, which impedes the normal progress of the examination.

(4) Disqualification will invalidate the examination and result in forfeiture of the examination and fees. The applicant will be required to reapply, submit additional examination fees, and request in writing to schedule another examination. Reexamination will be scheduled at a date, time and place determined by the Director following date of disqualification. Reexamination will be conducted at the agency office.

Stat. Auth.: ORS 676.615, 690.065, 690.165

Stats. Implemented: ORS 676.615, 690.065, 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; Renumbered from 817-030-0025; BH 33-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-030-0040

Type of Examination

(1) The written examination consists of the following sections: Oregon Laws and Rules, Barbering, Hair Design, Facial Technology and Nail Technology. Examinations test the applicant's knowledge of the following subjects:

- (a) The basic principals of safety and infection control;
- (b) The safety and infection control rules of the Board of Cosmetology;
- (c) Chemical use and storage;
- (d) Diseases and disorders;
- (e) Equipment and tools/implements;
- (f) Licensure requirements and regulations;
- (g) Standards of practice;
- (h) Definitions; and
- (i) Practical applications and procedures.

(2) Each section will be scored individually. The passing score for each section is 75 percent or better.

(3) The Board will establish by policy a maximum examination time allowance for each examination section, listed in section (1) of this rule. Maximum examination time allowances shall be published and included in the application for certification packet, posted in the agency Web site and made available upon request.

(4) The examination may be administered using a computerized testing system with touch screen functionality for selecting the candidate's response to multiple-choice question. The examination is administered in English. Examination candidates may be electronically monitored during the course of testing.

(5) The practical examination is a final examination conducted at an Oregon licensed career school of barbering, hair design, facial technology or nail technology, administered at the direction of and in accordance with criteria established by the Department of Education, Private Career Schools. The examination must be documented according to provisions set forth by the Department of Education, Private Career Schools. The Board of Cosmetology recognizes and sanctions the practical examination conducted by licensed career schools in accordance with the Department of Education's criteria and protocols, as its practical competency examination.

(6) In collaboration with the Department of Education, Private Career Schools, the Board or designated staff may periodically review any career school's practical examination procedures and conduct to determine compliance with Department of Education's criteria and to maintain Board recognition of the practical examination.

Stat. Auth.: ORS 676.615, 690.065, 690.165

Stats. Implemented: ORS 676.615, 690.065, 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1983(Temp), f. & ef. 10-4-83; BH 1-1984, f. & ef. 2-13-84; BH 4-1984, f. & ef. 12-7-84; BH 2-1990, f. & cert. ef. 10-29-90; Renumbered from 817-030-0060; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-030-0045

Sections Which the Applicant Must Pass

(1) An applicant who is a graduate of an Oregon Licensed Career School or applying for certification based on equivalency according to OAR 817-030-0015(2)(a) and (b) must pass the Oregon Laws and Rules section of the examination and one or more of the following fields of practice:

- (a) Barbering;
- (b) Hair Design;
- (c) Facial Technology; or
- (d) Nail Technology.

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(2) Applicants failing to successfully complete the examination process and thus failing to obtain a certificate within two years from the date of their most recent examination attempt, will be required to:

- (a) Reapply for examination according to OAR 817-030-0015;
- (b) Pay the application, examination and original certificate fees; and
- (c) Retake all written and practical examination sections qualified for, regardless of a previously passing score.

(3) Applicants for certification who fail any part of the examination may apply to retake the failed section(s) twice before being required to obtain recertification of training through an Oregon career school licensed under ORS 345.010 to 345.450

Stat. Auth.: ORS 676.615, 690.065 & 690.165
Stats. Implemented: ORS 676.615, 690.065 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-030-0055

Notification of the Examination Results

Examination results will be issued following completion of each examination section as part of the agency's automated testing system. Applicants taking examinations conducted under special accommodation will be given results by mail within seven calendar days following the date of examination.

Stat. Auth.: ORS 690.065 & 690.165
Stats. Implemented: ORS 690.065 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-030-0065

Procedure if the Applicant Fails

(1) Failed sections of the examination may be retaken at the next available date and time, as scheduling allows. Retaking a failed examination requires registration and payment of the examination fees.

(2) Opportunity to review failed sections of the examination, conducted by use of the electronic touch screen computer testing system, are provided at the conclusion of each examination question/answer selection, or immediately following conclusion of the entire examination. Review of failed examination sections at a later time or date is prohibited.

(3) Applicants retaking the examination must present photographic identification such as a driver's license and their original Social Security card as required by OAR 817-030-0020(4).

Stat. Auth.: ORS 690.065 & 690.165
Stats. Implemented: ORS 690.065 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1983(Temp), f. & ef. 10-4-83; BH 1-1984, f. & ef. 2-13-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-030-0080

Special Examination Accommodations

(1) Applicants who have a learning, psychological, physical, or other disability which requires an accommodation to the regular testing environment may request a special examination, if the disability is covered under the Americans with Disabilities Act (ADA).

(2) Requests for accommodation must be made on forms provided by the Board and contain supporting documentation completed by a licensed professional holding appropriate credentials qualified to certify that the applicant's disabling condition requires the requested test accommodation.

(3) Requests for accommodation shall be arranged 30 calendar days in advance of the preferred examination date and time by special appointment.

(4) All special examinations are conducted at the agency. If the agency is unable to accommodate the disability at the office, special arrangements will be made for an adequate test site to accommodate the request.

Stat. Auth.: ORS 690.065 & 690.165
Stats. Implemented: ORS 690.065 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-030-0100

Interpreter Assisted Examinations

(1) An applicant may submit a written request to the agency for a special examination to accommodate their inability to speak or read English.

(2) Following the receipt of an application, an examination date will be scheduled.

(3) The applicant must secure and arrange for an individual to provide translation services and must pay any costs involved.

(4) The applicant must agree to specific provisions concerning the requirements, administration and conduct of the examination before taking the scheduled examination.

(5) Interpreters must meet the following requirements before providing examination interpreting services:

- (a) Be registered by an agency or organization approved by the Board.
- (b) Be on Board approved list before examination date;
- (c) Shall not be personally affiliated with the test applicant; and
- (d) Must present picture identification at the time of examination.

(6) Applicants or interpreters will be excluded from the examination if they do not present the proper identification and documentation at the time of scheduled examination.

(7) All interpreter-assisted examinations are conducted at the agency and are mechanically recorded using an audio recording device.

(8) The Board may approve and establish by policy additional examination time beyond published maximum allowances, per examination section listed in OAR 817-030-0040, to accommodate language translation services. Examinations are scheduled in the order in which applications are received in the office and according to available testing dates.

Stat. Auth.: ORS 676.615, 690.165
Stats. Implemented: ORS 676.615, 690.065, 690.165
Hist.: BOC 1-2000(Temp), f. 1-31-01, cert. ef. 2-1-01 thru 7-29-01; BOC 3-2001, f. 3-30-01, cert. ef. 4-1-01; BOC 5-2001, f. 11-30-01, cert. ef. 12-1-01; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-035-0010

Issuance and Renewal of Certificates, Licenses and/or Registrations

(1) Individuals will be subject to the provisions of ORS 690.046, 690.055, 690.057, 690.085 and OAR 331-030-0010 for issuance and renewal of certificates, licenses and registrations.

(2) An applicant whose renewal payment is received by the agency, or is postmarked, after the expiration date will be assessed a late renewal fee, as specified in ORS 690.085(4). A late renewal fee of \$25 for each year in expired status will be required to renew a certificate, license or registration.

(3) Practitioners who fail to renew their certificate within two years from the expiration date must reapply and meet requirements of ORS 690.085(5).

(4) Independent contractors who fail to renew their registration within one year from the date of expiration must reapply and pay the application and registration fees.

(5) The agency may also request that applicants provide their Social Security number at the time of renewal.

(6) Practitioner Certificates. When renewing a certificate, applicants must provide the following information to the agency:

- (a) Name and current residential or mailing address;
- (b) Certificate number and expiration date;
- (c) Residence area code and telephone number;
- (d) Date of birth; and
- (e) Information regarding whether actively engaged in performing services within a field(s) of practice and, if so;

(f) The name, address, telephone number and facility license or independent contractor registration number where services are being performed, or other work location where service is performed.

(7) Independent Contractor Registration. When renewing an independent contractor registration, applicants must provide the following information to the agency:

- (a) Independent contractor registration number and expiration date;
- (b) Assumed Business Name if using name other than full legal name in business;

(c) Name, address and license number of facility where working under lease agreement, or business mailing address;

- (d) Residential address;
- (e) Business area code and telephone number; and
- (f) Information regarding whether actively engaged in performing services within a field(s) of practice.

(8) Facility Licenses. When renewing a facility license, applicants will be subject to requirements of ORS 690.085(2) and (4). Applicants must provide the following information to the agency at the time of renewal;

- (a) Facility license number and expiration date;
- (b) Name and place of business, or business mailing address;
- (c) Business area code and telephone number; and
- (d) Whether regulated services outside the scope of ORS 690.005 to 690.235 are being performed within the premises of the facility. Such serv-

ADMINISTRATIVE RULES

ices include but are not limited to electrolysis, tanning, ear and body piercing, or tattooing, i.e. permanent makeup.

Stat. Auth.: ORS 676.605, 676.615, 690.085, 690.165
Stats. Implemented: ORS 676.605, 676.615, 690.085, 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-040-0015, BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-035-0030

Document Issuance/Surrender

(1) Individuals who achieve a passing score on the examination in accordance with OAR 817-030-0045 and pay the initial certificate fee will be issued a certificate authorizing the holder to practice barbering, hair design, facial technology, or nail technology as provided in ORS 690.048.

(2) Certificate, license and registration holders are subject to provisions of OAR 331-030-0010 regarding issuance and renewal of an authorization, and to provisions of OAR 331-030-0020 regarding authorization to practice and requirements for issuance of a duplicate authorization.

Stat. Auth.: ORS 676.615, 690.048, 690.123, 690.165
Stats. Implemented: ORS 676.615, 690.048, 690.123, 690.165
Hist.: BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; Renumbered from 817-030-0095; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-035-0050

Application and Criteria for Certificate of Identification

(1) A practitioner who provides services outside of a licensed facility must hold a certificate of identification.

(2) The applicant for a certificate of identification must submit:

(a) A completed application, indicating applicant's name, current residential address (and mailing address if applicable), telephone number, and certificate number;

(b) A legible copy of photographic identification such as a driver's license;

(c) Payment of application and certificate of identification fees; and

(d) The assumed business name (ABN) filed with and issued by the Corporations Division, Assumed Business Names section, if applicable.

(3) The agency will conduct an examination of the applicant's safety and infection control practices, which the applicant must pass prior to issuance of the certificate of identification. The examination will be performed at a time and place determined by the agency.

(4) Upon qualification, the agency will issue a certificate of identification indicating the fields of practice the practitioner is certified to perform outside of a licensed facility.

(5) The certificate of identification is issued as a separate document from the certificate authorizing the holder to perform services, for a period of one year and expires on the last date of the month one year from the date all qualifications were met.

(6) A certificate of identification is not automatically renewable. Applicants must reapply and meet qualification criteria prior to issuance.

(7) A holder of a certificate of identification shall:

(a) Provide each client with a card indicating the name and address of the agency, that specifically states the client may contact the agency to comment on any of the services received or on any of the sanitary procedures followed while performing services;

(b) Display the practitioner's certificate number on all advertising and the card required by subsection (7)(a) of this section when soliciting business; and

(c) Be subject to the Board's health, safety, and infection control rules and regulations.

(8) The certificate of identification may be suspended or revoked by the Board if the certificate holder:

(a) Practices or performs services at the practitioner's residence when the residence is not licensed as a facility under OAR 817-020-0005;

(b) Practices or performs services on clients other than those who either reside at or are employed at the residence, office or business where services are provided; or

(c) Both practices and resides outside the state of Oregon.

(9) The certificate of identification may be suspended or revoked by the agency if the Board has taken action to refuse to issue or renew, or has suspended or revoked the practitioner's certificate.

Stat. Auth.: ORS 676.615, 690.048, 690.123, 690.165
Stats. Implemented: ORS 676.615, 690.048, 690.123, 690.165
Hist.: BH 4-1984, f. & cert. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, f. & cert. ef. 7-1-94; Renumbered from 817-020-0040; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-035-0070

Independent Contractor Registration Eligibility

An independent contractor registration may be issued if the applicant:

(1) Holds a current, valid practitioner's certificate;

(2) Is at least 18 years of age as required in ORS 690.057;

(3) Meets the criteria for independent contractor status in accordance with ORS 690.035, 690.057, 670.600, and 657.040;

(4) Applies on forms provided by the agency and pays the required application and registration fees;

(5) Complies with all applicable rules and regulations of the Board and other state agencies; and

(6) Certifies that application information is correct.

Stat. Auth.: ORS 676.615, 690.055, 690.057, 690.165
Stats. Implemented: ORS 676.615, 690.055, 690.057, 690.165
Hist.: BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-035-0090

Independent Contractor Registration Criteria

(1) An independent contractor registration may be issued upon qualification according to the provisions of OAR 817-035-0070.

(2) An independent contractor registration will be evidence of the practitioner's qualification to work independent of a facility license holder. The registration is transferable between work locations, provided the agency is given notification as stated in OAR 331-010-0040(3).

(3) Independent contractors must:

(a) Be subject to all of the Board's health, safety, and infection control rules and regulations;

(b) Allow the agency's enforcement officer to inspect all working areas when open for business;

(c) Abstain from obstructing or hindering the normal progress of the inspection, threatening or exerting physical harm, or enabling another individual to impede the inspection process;

(d) Contact the agency in writing to make arrangements for an inspection if after one year the agency has not performed an inspection; and

(e) Post the registration and inspection certificate as stated in OAR 817-035-0110.

Stat. Auth.: ORS 676.615, 690.055, 690.057, 690.085, 690.095, 690.165, 690.225
Stats. Implemented: ORS 676.615, 690.055, 690.057, 690.085, 690.095, 690.165, 690.225
Hist.: BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-035-0110

Posting Requirements

Certificate, license, permit and registration holders are subject to the requirements of OAR 331-030-0020 in addition to the following posting requirements:

(1) Facility licenses must be posted in public view.

(2) Independent contractor registrations must be posted at the registration holder's workstation in public view.

(3) Practitioner certificates must be posted in public view. The practitioner's address printed on the certificate may be blocked from public view.

(4) Demonstration and temporary authorizations must be posted in public view.

Stat. Auth.: ORS 676.615, 690.095, 690.165
Stats. Implemented: ORS 676.615, 690.095, 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; Renumbered from 817-010-0120; BH 1-1988, f. & cert. ef. 7-1-88; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; Renumbered from 817-020-0013; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-040-0003

Fees

(1) Applicants and authorization holders are subject to provisions of OAR 331-010-0010 and 331-010-0020 regarding payment of fees, penalties and charges.

(2) Fees established by the Board are as follows:

(a) Application for a certificate, license, permit or registration (non-refundable): \$15.

(b) Original practitioner certificate (two-year): \$50.

(c) Renewal of practitioner certificate (two-year) or upgrade certificate to include another discipline: \$50.

(d) Examination for certification (each attempt):

(A) Oregon Laws and Rules: \$10;

(B) Barbering: \$10;

(C) Hair Design: \$10;

(D) Facial Technology: \$10;

(E) Nail Technology: \$10.

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- (F) Certificate of identification (exam): \$15
 - (e) Original facility license: \$50.
 - (f) Renewal of facility license: \$50.
 - (g) Original independent contractor registration: \$50.
 - (h) Renewal of independent contractor registration: \$50.
 - (i) Annual Certificate of identification (authorization): \$50.
 - (j) Duplicate or replacement certificate, license, registration or permit: \$5.
 - (k) Late renewal fee: \$25 per year in expired status.
 - (l) Demonstration permit: \$15.
 - (m) Reciprocity fee: \$50.
 - (n) Temporary facility permit: \$35.
- Stat. Auth.: ORS 676.605, 676.615, 690.235
Stats. Implemented: ORS 676.605, 676.615, 690.235, 30.701
Hist.: BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 1-1990(Temp), f. 4-20-90 & cert. ef. 6-1-90; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-060-0020

Chemical Storage

(1) For the purposes of this section, the following terms are being used as defined by OAR 437, Division 2, General Occupational Safety and Health Rules Toxic and Hazardous Substances as amended and in effect November 2, 1999;

- (a) Corrosives;
- (b) Flammables (aerosol, gas, liquid, and/or solid);
- (c) Oxidizers.

(2) For purposes of this section "hazardous" and "segregated in storage" are defined as follows:

(a) "Hazardous" means capable of causing an unplanned, uncontrolled reaction which could present a hazard to practitioners or clients by explosion, fire, release of toxic gases or by-products, or physical or chemical burns; and

(b) "Segregated in storage" means that potentially hazardous chemicals and materials are separated (so as to prevent their mixing with one another through leakage, spillage or breakage) by an adequate distance or through the use of physical barriers such as partitions or separate shelving arrangements.

(3) All facilities, independent contractors and practitioners using chemicals in providing services to clients shall store the chemicals safely to avoid fire, explosion and bodily harm to clients and practitioners:

(a) Flammable chemicals shall be stored remote from potential sources of ignition (e.g., the pilot light of a hot water tank); and

(b) Chemicals which could interact in a hazardous manner (e.g., oxidizers, corrosives and flammables) shall be segregated in storage, in areas where surrounding air temperatures do not exceed 140 degrees Fahrenheit:

(A) Chemical containers holding one gallon or less may be stored in the same area or in the same storage cabinet with materials with which they could react, if one of the following conditions is met:

(i) Containers of reactive chemicals are separated by location or sufficient distance (i.e., at least 12 inches apart or on different shelves) to prevent their reaction; or

(ii) Glass bottles of reactive chemicals are treated to make them break-resistant (e.g., resin-coated) or are stored in rubber buckets or sleeves, or are stored with a partition separating them.

(B) Chemicals which are highly reactive or stored in containers greater than one gallon must be stored in separate cabinets, in safety-valve containers, or in locations isolated from other chemicals;

(C) Chemicals may be stored in containers which the Oregon Department of Transportation has approved for the shipping of those chemicals; and

(D) Chemically related waste or refuse and chemically dampened or saturated towels must be placed in the appropriate fire-retardant containers as stated in OAR 817-010-0035(4) and 817-010-0060.

Stat. Auth.: ORS 676.605, 676.615, 690.165, 690.205

Stats. Implemented: ORS 676.605, 676.615, 690.165, 690.205

Hist.: BH 1-1983(Temp), f. & ef. 10-4-83; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-060-0030

Use, Handling and Disposing of Chemicals

(1) Practitioners who use chemicals in order to provide services to clients shall mix those chemicals in a dispensing area, which has adequate ventilation away from open flame or other source of potential ignition.

(2) All chemically saturated towels and waste from the work and storage area must be placed in covered, fire-retardant containers. Refer to 817-010-0035 and 817-010-0060.

(3) All chemicals shall be disposed of according to manufacturers instructions and in accordance with local and state environmental requirements.

(4) Cosmetic products containing hazardous substances, which have been banned by the U.S. Food and Drug Administration for use in cosmetic products, are prohibited on the premises of facilities.

(5) Products are prohibited from being used in a manner that is disapproved by the U.S. Food and Drug Administration.

(6) A practitioner shall not use any product containing compounds or substances characterized as hazardous or harmful to humans by Material Safety Data Sheets (MSDS) and/or random product testing.

(7) Smoking or use of an open flame at the workstation, by either the client or practitioner, during any phase of chemical service, i.e. mixing, application, processing, or use of any potentially explosive chemicals, is strictly prohibited. This prohibition includes smoking by the client inside the facility while any phase of a chemical service is being performed.

Stat. Auth.: ORS 676.605, 676.615, 690.165, 690.205

Stats. Implemented: ORS 676.605, 676.615, 690.165, 690.205

Hist.: BH 1-1983(Temp), f. & ef. 10-4-83; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-080-0005

Investigative Authority

The Health Licensing Office may initiate and conduct investigations of matters relating to the practice of cosmetology, pursuant to ORS 676.608 and 676.618, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and 690.167.

Stat. Auth.: ORS 676.608, 676.618, 690.165, 690.167

Stats. Implemented: ORS 676.608, 676.618, 690.165, 690.167

Hist.: BH 4-1984, f. & ef. 1-27-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0025

Schedule of Penalties for Facility and Independent Contractor Registration Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of the following facility license and independent contractor registration rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Operating a facility by a practitioner without first filing a facility application, paying the fees, and receiving a license is a violation of ORS 690.015(2) and (5) and shall incur the following penalties:

(a) For 1st offense: \$200;

(b) For 2nd offense: \$500;

(c) For 3rd offense: The facility owner/operator shall be brought before the Board for the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a certificate and/or a facility license.

(2) Operating as an independent contractor without first filing an independent contractor registration application, paying the fees, and receiving a registration is a violation of ORS 690.015(4) and (5) and shall incur the following penalties:

(a) For 1st offense: \$200;

(b) For 2nd offense: \$500;

(c) For 3rd offense: The independent contractor shall be brought before the Board for the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a certificate, license, registration and/or permit.

(3) Operating a facility or as an independent contractor with an expired license or registration is a violation of ORS 690.015(2) or (4) and OAR 331-030-0010(4) and shall incur the following penalties:

(a) For 1st offense: \$200;

(b) For 2nd offense: \$500;

(c) For 3rd offense: The independent contractor shall be brought before the Board for the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a certificate, license registration and/or permit.

(4) Operating a facility or as an independent contractor without a facility license or registration by a person who is practicing but not certi-

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fied is a violation of ORS 690.015(2) and/or (4) and (5) and shall incur the following penalties:

- (a) For 1st offense: \$500;
- (b) For 2nd offense: \$1,000;

(c) For 3rd offense: The person shall be brought before the Board for the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a certificate, license registration and/or permit.

(5) Allowing an uncertified person to practice as an employee is a violation of ORS 690.015(7) and shall incur the following penalties:

- (a) For 1st offense: \$500;
- (b) For 2nd offense: \$1,000;

(c) For 3rd offense: The person shall be brought before the Board for the assessment of a penalty and/or the proposed revocation, suspension or refusal to issue a license.

(6) Failing to notify the Board of a work location change as an independent contractor as required by OAR 331-010-0040(3) shall incur the following penalties:

- (a) For 1st offense: \$200;
- (b) For 2nd offense: \$500;

(c) For 3rd offense: The independent contractor shall be brought before the Board for the assessment of a penalty and/or the proposed revocation, suspension or refusal to issue an independent contractor registration.

(7) Failing to allow the Board to inspect the premises when the facility is open or obstructing or hindering the normal progress of the inspection, threatening or exerting physical harm, or enabling another individual to impede the inspection progress is a violation of OAR 817-020-0012(1) and (2) and shall incur the following penalties:

- (a) For 1st offense: \$500;
- (b) For 2nd offense: \$1,000;

(c) For 3rd offense: The facility owner/operator or practitioner shall be brought before the Board for the assessment of a penalty and/or the proposed revocation, suspension or refusal to issue a certificate, license, registration and/or permit.

(8) Allowing an employee to practice with an expired practitioner certificate is a violation of ORS 690.015(7) and shall incur the following penalties:

- (a) For 1st offense: \$200;
- (b) For 2nd offense: \$500;

(c) For 3rd offense: The facility owner shall be brought before the Board for the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a facility license.

(9) Failing to meet the specifications and standards required under OAR 817-010-0007 in a facility is a violation of OAR 817-020-0011(1)(b) and shall incur the following penalty for any offense: Immediate suspension of the facility license until the violation is corrected.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167
Hist.: BH 3-1984(Temp), f. & ef. 6-27-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0020; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2002, f. 5-31-02, cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0035

Schedule of Penalties for Practitioner Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of the following practitioner licensing rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Operating with an expired practitioner certificate is a violation of ORS 690.015(1) and OAR 331-030-0010(4) and shall incur the following penalties:

- (a) For 1st offense: \$200;
- (b) For 2nd offense: \$500;

(c) For 3rd offense: The practitioner shall be brought before the Board for the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a certificate, license, registration and/or permit.

(2) Practicing barbering, hair design, facial technology or nail technology without a certificate, with a certificate issued to another person, or a suspended certificate is a violation of ORS 690.015(1), 676.612(4) and/or 676.612(1)(d) and shall incur the following penalties:

- (a) For 1st offense: \$500;

- (b) For 2nd offense: \$1,000;

(c) For 3rd offense: The person shall be brought before the Board for the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a certificate, license, registration and/or permit.

(3) Performing services as a practitioner while working as an employee in an unlicensed facility is a violation of ORS 690.015(5) and shall incur the following penalties:

- (a) For 1st offense: \$200;
- (b) For 2nd offense: \$500;
- (c) For 3rd offense: \$1,000.

(4) Failing as a practitioner to inform the Board within 30 calendar days of a change of employment with a facility is a violation of OAR 331-010-0040 and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(5) Failing to notify the Board of a move or a change of home address within 30 calendar days of the change is a violation of OAR 331-010-0040 and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(6) Performing barbering, hair design, facial technology and/or nail technology services by a student when not on the premises of the career school in which he or she is enrolled is a violation of OAR 817-100-0005(3) and shall incur the following penalties:

- (a) For 1st offense: \$150;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

Stat. Auth.: ORS 676.605, ORS 676.615, 676.992, 690.165, 690.167
Stats. Implemented: ORS 676.605, ORS 676.615, 676.992, 690.165, 690.167
Hist.: BH 3-1984(Temp), f. & ef. 6-27-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0020; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0045

Schedule of Penalties for Certificate/License/Registration/Permit Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of the following certificate/license/registration/permit rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply:

(1) Altering a license, certificate, registration or permit authorization issued by the agency is a violation of ORS 690.015(10) and shall incur the following penalties:

- (a) For 1st offense: \$500;
- (b) For 2nd offense: \$1,000;

(c) For 3rd offense: The person shall be brought before the Board for the assessment of a penalty and/or the proposed revocation, suspension or refusal to issue a certificate, license, registration, permit or authorization.

(2) Failing to post a facility license, independent contractor registration, practitioner certificate and/or permit in a publicly visible place within a facility or at the independent contractor's work station is a violation of ORS 690.095 and OAR 817-035-0110 and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$500;

(c) For 3rd offense: The practitioner and/or facility owner/independent contractor shall be brought before the Board for the assessment of a penalty and/or probation, revocation, suspension or refusal to issue a certificate, facility license and/or independent contractor registration. Posting of photocopies, reproductions, and pocket identification cards will be cited as failure to post.

(3) Failing to post an inspection certificate in a publicly visible place within the facility or at the work station of an independent contractor is a violation of OAR 817-035-0110(3) and shall incur the following penalties:

- (a) For 1st offense: \$50.
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(4) Failing to return or surrender a certificate, license, registration and/or permit upon demand by the Board is a violation of OAR 331-030-0020(5) and shall incur the following penalties:

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- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(5) Failing to provide appropriate photographic identification upon request by the Board is violation of OAR 331-030-0020(4) and shall incur the following penalties:

- (a) For 1st offense: \$300;
- (b) For 2nd offense: \$500;
- (c) For 3rd offense: \$1,000.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167
Hist.: BH 3-1984(Temp), f. & cf. 6-27-84; BH 4-1984, f. & cf. 12-7-84; BH 1-1985, f. & cf. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0020; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0050

Schedule of Penalties for Certificate of Identification Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of the following certificate of identification licensing rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Working with an expired certificate of identification is a violation of ORS 690.015(1) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$500;
- (c) For 3rd offense: The practitioner shall be brought before the Board for the assessment of a monetary penalty and any other penalties allowed by law including refusal to issue a certificate.

(2) Failing to display the practitioner certificate number when advertising or soliciting business; and/or, failing to provide required card under a certificate of identification is a violation of OAR 817-035-0050(7)(a) and/or (b) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(3) Practicing outside a licensed facility without Board authorization to do so is a violation of ORS 690.123 and shall incur the following penalties:

- (a) For 1st offense: \$300;
- (b) For 2nd offense: \$500;
- (c) For 3rd offense: The practitioner shall be brought before the Board for the assessment of a penalty and/or the proposed suspension or refusal to issue a certificate.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167
Hist.: BH 3-1984(Temp), f. & cf. 6-27-84; BH 4-1984, f. & cf. 12-7-84; BH 1-1985, f. & cf. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0020; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0055

Schedule of Penalties for Home Facility Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of the following home facility licensing rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Failing to identify a facility located in a residence by means of a house number or a sign easily visible from the street is a violation of OAR 817-020-0011(2)(a) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(2) Failing to have a separate entry to the living area of the residence for a facility located in a residence or to properly separate the facility from the living area of the residence is a violation of OAR 817-020-0011(2)(d), (e) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167
Hist.: BH 3-1984(Temp), f. & cf. 6-27-84; BH 4-1984, f. & cf. 12-7-84; BH 1-1985, f. & cf. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f.

6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0020; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0065

Schedule of Penalties for Water Supply and Disposal Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Failing to have immediate access to both hot and cold running water in the working area of a facility or as a practitioner working under a certificate of identification is a violation of OAR 817-010-0014(4) and 817-035-0050(7)(c) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(2) Failing to have a facility water supply which meets state pressure and purity requirements is a violation of OAR 817-010-0014(1) and (2) and shall incur the following penalty for any offense: Referral of the violation to the State Plumbers Board and immediate suspension of the facility license until the violation is corrected.

(3) Improperly disposing of liquid waste from a facility is a violation of OAR 817-010-0021(3) and shall incur the following penalty for any offense: Referral of the violation to the State Plumbers Board and immediate suspension of the facility license until the violation is corrected.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Hist.: BH 1-1985, f. & cf. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0070

Schedule of Penalties for Towels and Linens Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Failing to use clean towels or linens for each client is a violation of OAR 817-010-0035(1); and, failing to launder towels and linens as required is a violation of OAR 817-010-0035(5), and shall incur the following penalties for each violation:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(2) Failing to store clean towels and linens in a clean area is a violation of OAR 817-010-0035(3) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(3) Failing to immediately deposit all used towels with chemical residue in a closed, fire retardant container is a violation of OAR 817-010-0035(4) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(4) Failing to deposit soiled towels in a covered container is a violation of OAR 817-010-0035(4) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Hist.: BH 1-1985, f. & cf. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0075

Schedule of Penalties for Waste Disposal Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

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(1) Failing to immediately deposit all chemical waste materials in a closed container at the conclusion of each service, or a fire-retardant container at the close of each business day is a violation of OAR 817-010-0060(1) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(2) Failing to immediately deposit all waste and refuse in covered containers is a violation of OAR 817-010-0060(2) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(3) Failing to store cigarette ashes, butts, etc. in a fire-retardant container is a violation of OAR 817-010-0060(4) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(4) Failing to keep the outer surface of a waste disposal container clean is a violation of OAR 817-010-0060(5) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(5) Failing to dispose of disposable material coming into contact with blood or other bodily fluids in a sealable plastic bag is a violation of OAR 817-010-0060(6) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(6) Failing to dispose of disposable sharp-edged material coming into contact with blood or other bodily fluids in a sealable rigid container is a violation of OAR 817-010-0060(7) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(7) Failing to have sealable plastic bags and sealable rigid containers available for use at all times services are being performed is a violation of OAR 817-010-0060(8) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0080

Schedule of Fines for Dispensing of Cosmetic Preparations Violations

(1) In accordance with OAR 817-090-0015, the Board has adopted the following fine schedule for the 1st, 2nd, and 3rd violations of the following safety and sanitation rules. For the 4th and subsequent offenses, the provisions of OAR 817-090-0005 will apply:

(2) Failing to properly dispense powders, liquids, wave solutions, creams, semi-solid substances or other materials which come in contact with a client is a violation of OAR 817-010-0055 and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

Stat. Auth.: ORS 690.165, ORS 690.205 & ORS 690.995
Stats. Implemented: ORS 690.165, ORS 690.205 & ORS 690.995
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0085

Schedule of Penalties for Sanitation or Disinfectant Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Failing to use a high-level disinfectant or failing to totally immerse all tools and implements with sharp edges or points, according to disinfectant manufacturers instructions is a violation of either OAR 817-010-0068(3) or 817-010-0101(5) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(2) Failing to keep disinfecting solutions at adequate strength, free of foreign material and/or available for immediate use at all times the facility is open for business is a violation of OAR 817-010-0065(6) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(3) Failing as a facility license holder, an independent contractor or a practitioner working under a certificate of identification to provide and maintain adequate disinfecting and sterilizing equipment to the number of practitioners, usage requirements or volume of business is a violation of OAR 817-010-0065(3) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(4) Failing to use a low-level disinfectant or failing to totally immerse all tools and implements, without sharp edges or points according to disinfectant manufacturers instructions is a violation of OAR 817-010-0068(2) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0090

Schedule of Penalties for Disinfecting Requirements of Tools and Implements Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Failing to cleanse and disinfect electrical or mechanical hair clipper blades after use on each client is a violation of OAR 817-010-0069(2) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(2) Failing as a facility license holder, independent contractor, or practitioner working under a certificate of identification to disinfect tools and implements in a sanitizing pan or, alternatively, to use pre-disinfected packets or containers of tools and implements, prepared in advance for each client, is a violation of OAR 817-010-0065(3) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(3) Failing to store new, disinfected or cleaned tools and implements separately from all others is a violation of OAR 817-010-0075(1) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(4) Failing to ensure that all articles which come in contact with a client are disinfected, cleaned or disposed of is a violation of OAR 817-010-0040(2) and/or 817-010-0040(3) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(5) Failing to discard a disposable nail file, cosmetic sponge, buffer block, sanding band or sleeve, orangewood stick, or nail bits designed for single use after use on a client, or to give the nail file, cosmetic sponge, buffer block, sanding band or sleeve, orangewood stick or nail bit to the

ADMINISTRATIVE RULES

client is a violation of OAR 817-010-0065(7) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

Stat. Auth.: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Stats. Implemented: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 4-2001(Temp), f. & cert. ef. 11-1-01 thru 4-29-02; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0095

Schedule of Penalties for Cleanable/Non-Absorbent Surfaces Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Failing to have cleanable, non-absorbent surfaces on all equipment in all areas of a facility where services are performed is a violation of OAR 817-010-0101(1) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(2) Failing to keep equipment in a facility, including upholstery fabrics, clean and in good repair is a violation of OAR 817-010-0101(3) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(3) Failing to have cleanable, non-absorbent floor surfaces in good repair in the area(s) of a facility where services are performed is a violation of OAR 817-010-0106(1) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

Stat. Auth.: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Stats. Implemented: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0100

Schedule of Penalties for Clean Conditions Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Failing to keep a restroom located on the premises of a facility clean and sanitary is a violation of OAR 817-010-0021(2) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(2) Failing to keep a facility shampoo bowl or sink clean is a violation of OAR 817-010-0101(2) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(3) Failing to keep roller-storage receptacles and their contents clean and free of foreign material is a violation of OAR 817-010-0075(2) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(4) Failing to keep storage drawers for clean tools and implements clean and to use such drawers only for clean tools and implements is a violation of OAR 817-010-0075(3) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(5) Failing to keep storage cabinets, work stations, vanities and back-bars or other such equipment clean is a violation of OAR 817-010-0075(4) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(6) Allowing hair clippings to accumulate on a facility floor or failing to dispose of hair clippings in a covered container is a violation of OAR 817-010-0106(3) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(7) Failing to keep facility walls and ceiling clean and free of excessive spots, mildew, condensation or peeling paint is a violation of OAR 817-010-0110 and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(8) Failing to properly clean and disinfect foot spa equipment as required is a violation of OAR 817-010-0101(5) and shall incur the following penalty:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

Stat. Auth.: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Stats. Implemented: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0105

Schedule of Penalties for Client Health and Safety Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Failing to use a neck strip or a towel to prevent contact between the skin of a client's neck and a hair cloth or cape is a violation of OAR 817-010-0040(1) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(2) Failing to use a disposable cover on the head of a client who is trying on a hairpiece or to clean and label used hair goods as "used" prior to resale is a violation of OAR 817-010-0085 and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(3) Failing to provide disposable drinking cups when beverages are served in a facility is a violation of OAR 817-010-0090 and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(4) Failing to wear single-use disposable protective gloves while having open sores or skin lesions during any performance of service on a client is a violation of OAR 817-015-0030(2) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(5) Performing services while diagnosed with a communicable disease or condition in a transmittable form is a violation of OAR 817-120-0005(4) & (5) and shall incur the following penalty for any violation: Immediate suspension until the disease or condition is no longer communicable.

(6) Treating any disease or knowingly serving any client having a communicable disease or condition except head lice is a violation of OAR 817-120-0005(4) & (5) and shall incur the following penalties:

- (a) For 1st offense: \$250;
- (b) For 2nd offense: \$500;
- (c) For 3rd offense: Suspension or revocation of practitioner certificate.

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(7) Performing services without washing one's hands immediately before and after serving each client is a violation of OAR 817-015-0030(1) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(8) Failing to maintain client records for each client receiving nail technology services, maintain client records on the premises of the facility or allow an enforcement officer access to review client records upon request is a violation of ORS 817-015-0065 and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

Stat. Auth.: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Stats. Implemented: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 4-2001(Temp), f. & cert. ef. 11-1-01 thru 4-29-02; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0110

Schedule of Penalties for Safe Working Conditions Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following safety and infection control rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Failing to meet the requirements of the Oregon Indoor Clean Air Act is a violation of OAR 817-010-0009 and will be referred to the Department of Human Services, Health Services.

(2) Having frayed electrical wiring or overloading the electrical circuits in a facility is a violation of ORS 690.055(1)(C), 690.055(4)(F) and OAR 817-010-0007(1) and shall be referred to the appropriate authority.

(3) Having pets in facilities, other than fish in an aquarium, is a violation of OAR 817-010-0095 and shall incur the following penalties.

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(4) Failing to wear single-use disposable protective gloves while performing a service on a client whose skin shows signs of excretion of any body fluids is a violation of OAR 817-015-0030(3) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(5) Failing to wear eye goggles, shields or mask in performing services on a client where the likelihood of splattering is present is a violation of OAR 817-015-0030(4) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

(6) Failing to have a restroom available which is "reasonably accessible" for facility employees is a violation of OAR 817-010-0021(1) and shall incur the following penalties:

- (a) For 1st offense: \$50;
- (b) For 2nd offense: \$100;
- (c) For 3rd offense: \$200.

Stat. Auth.: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Stats. Implemented: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-090-0115

Schedule of Penalties for Chemical Use and Storage Violations

The Board has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violations of the following chemical use and storage rules. The following schedule shall apply except as the agency otherwise determines in consideration of the factors referred to in OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 will apply.

(1) Failing to store chemicals safely to avoid fire, explosion and/or bodily harm to clients and practitioners is a violation of OAR 817-060-0020(3) and shall incur the following penalties:

- (a) For 1st offense: \$100;

(b) For 2nd offense: \$300;

(c) For 3rd offense: \$500.

(2) Failing to mix chemicals in a dispensing area is a violation of OAR 817-060-0030(1) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(3) Mixing or using chemicals near an open flame or other potential source of ignition is a violation of OAR 817-060-0030(1) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

(4) Smoking, or allowing a client to smoke, or having an open flame at the workstation, during any phase of chemical service, i.e. mixing, application, processing, or use of any potentially explosive or flammable chemical, in relation to performing services is a violation of OAR 817-060-0030(7) and shall incur the following penalties:

- (a) For 1st offense: \$100;
- (b) For 2nd offense: \$300;
- (c) For 3rd offense: \$500.

Stat. Auth.: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Stats. Implemented: ORS 676.605, 676.605, 676.615, 676.992, 690.165, 690.167, 690.205
Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0040; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

817-100-0005

Exemptions

(1) ORS 690.025(4) applies only while persons are on the premises of a business.

(2) Merchants or other individuals must have a certificate, license and/or registration under this Chapter to demonstrate supplies or apparatuses for purposes of sale when:

(a) They receive any form of compensation for the product/apparatus before conducting or presenting a "free" demonstration;

(b) They require any form of compensation to reserve a place at a "free" demonstration; or

(c) They make any stipulation, which requires a fee, or any remunerative action on the part of the client before or after receiving a "free" demonstration.

(3) A student of barbering, hair design, facial technology or nail technology is exempted only when on the premises of the career school in which the student is enrolled, and only while pursuing the prescribed curriculum.

(4) Persons working within a licensed health care facility providing services exclusively to facility residents without specific compensation from the resident for the service shall be exempt under ORS 690.025(2) and OAR 817-020-0305.

(5) Persons who work in photography studios, applying temporary makeup, combing hair or applying hair spray, without receiving specific compensation for service when provided to a photography client solely for preparing the client for a professional photograph shall be exempt under the provisions of ORS 690.025(6).

(6) Persons applying temporary makeup, combing hair or applying hair spray, without specific compensation for services, provided for the sole purpose of preparing any individual for a theatrical performance shall be exempt under ORS 690.025(6).

(7) Practitioners may provide services outside the premises of a licensed facility, on persons confined to their residence through medical disability or restriction without requirement of working under a certification of identification, provided they carry and display their practitioner certificate while working on the person or performing services.

(8) Domestic Administration refers to a person providing services in a location where the client or person resides and the services are provided only to persons who are related by blood, marriage, or domestic partnership.

(9) Emergency Services as described in ORS 690.025(1) means situations where failure to act is likely to result in greater injury or personal harm.

Stat. Auth.: ORS 690.025 & 690.165
Stats. Implemented: ORS 690.025 & 690.165
Hist.: BH 4-1984, f. & ef. 12-7-84; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, f. & cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

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Practice Standards

(1) Practitioners must be guided by the highest standards of professional conduct.

(2) Practitioners shall act and practice in a manner which safeguards the public's health, safety, and welfare.

(3) All practitioners shall be appropriately clothed while providing services and shall be subject to public decency laws.

(4) Practitioners shall not perform services while diagnosed with a communicable disease or condition in a transmittable form as defined in OAR 817-005-0005(17).

(5) Practitioners shall not treat any disease or knowingly serve any client having a communicable disease or condition, as defined in OAR 817-005-0005(17), except head lice.

Stat. Auth.: ORS 676.605, 676.615, 690.165

Stats. Implemented: ORS 676.605, 676.615, 690.165

Hist.: BH 1-1988, f. & cert. ef. 7-1-88; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-95, cert. ef. 7-1-96; Renumbered from 817-120-0010, BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04

Health Licensing Office, Board of Licensed Direct Entry Midwifery Chapter 332

Adm. Order No.: DEM 1-2004

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Rules Repealed: 332-001-0000, 332-001-0005, 332-001-0010, 332-001-0020, 332-001-0030, 332-001-0040, 332-025-0000, 332-025-0010, 332-030-0010, 332-030-0020, 332-030-0030

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

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

332-015-0000

Definitions

The following definitions apply as used in OAR 332-015-0000 through 332-030-0030.

(1) "Agency" means the Health Licensing Office. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(2) "Antepartum" means the period of time before the onset of labor with reference to the mother.

(3) "Birth assistant" means anyone who provides support or hands on aid to the primary birth attendant, or who functions under the supervision of a primary birth attendant, and has been trained in intrapartum emergency skills of direct entry midwifery.

(4) "Board" means, pursuant to ORS 687.470, the entity that advises the agency on matters relating to the practice of direct entry midwifery, and determines practice standards, education and training, and provides consultation to the agency on all disciplinary issues in accordance with ORS 687.420 to 687.495.

(5) "Client records" means written documentation, including licensee signatures or initials, of midwifery care provided to a client, including but not limited to demographic information, medical history, prenatal care, diagnostic studies and laboratory findings, labor, birth, and immediate postnatal care, maternal and infant care through postnatal weeks six to eight,

emergency transport plan, informed consent documentation, Health Insurance Portability and Accountability Act (HIPAA) releases.

(6) "Consultation" means a dialogue for the purpose of obtaining information or advice with an Oregon licensed health care provider, with hospital privileges if appropriate. Consultation includes but is not limited to the following objectives:

(a) Confirmation of a diagnosis;

(b) Recommendation regarding management of the medical problem or condition;

(c) Transfer of total or partial care of the patient when necessary.

(7) "Continuing education" means ongoing training or instruction by which midwives shall keep current regarding issues relevant to the provision of maternal, newborn and well women care.

(8) "Director" means the individual who is responsible for the performance of the agency as defined in ORS 676.610. The director appoints all subordinate officers and employees to carry out the duties of the agency.

(9) "Emergency skills of midwifery" means the provision of vital sign assessment, CPR, infant resuscitation, maternal hemorrhage control, charting, fetal monitoring, treatment of shock, essentials of maternal and infant transport procedures, and the setup of necessary equipment.

(10) "Emergency transport" means the mechanism by which a mother or newborn would be moved to a location where appropriate care could be provided. Such means may include ambulance or private vehicle.

(11) "Employed by" means other than independent contractor relationship and does not require remuneration.

(12) "Endorsement" means the authorization conferred on a licensed direct entry midwife for access to and administration of specific legend drugs and devices, upon completion of Board prescribed continuing education in accordance with ORS 687.493.

(13) "Equivalent" means substantially comparable but not identical, covering the same subject matter.

(14) "Family planning" means advice, counseling and provision of various contraceptive methods.

(15) "Fetal distress" is a condition in which the fetus demonstrates progressive and irresolvable clinical signs of compromise, such signs to include: abnormal fetal movement; loss of heart tone variability; non-reassuring fetal heart rate deceleration patterns such as late decelerations; non-reassuring changes in fetal heart baseline rate.

(16) "Health Licensing Office" means the agency.

(17) "Infectious Process" is a condition in which an individual demonstrates a combination of clinical signs of pathogenic infection. In the mother, such signs would include: weak, thready, elevated pulse, temperature over 101 degrees Fahrenheit taken orally, foul vaginal odor, foul odor of amniotic fluid, localized tenderness upon palpation, pain in the involved area (uterus, perineum, etc), malaise, headache, if pregnant fetal tachycardia. In the newborn infant, such signs would include: temperature instability with axillary temperatures of greater than 100 degrees Fahrenheit or less than 95.6 degrees Fahrenheit being particularly concerning, lethargy, poor feeding, respiratory distress, hypotonia or hypertonia, enlarged liver and/or spleen, skin lesions such as rashes or blisters, pallor, poor capillary refill, foul odor of placenta, amniotic fluid or baby.

(18) "Informed Consent" means the consent obtained following a thorough and easily understood explanation to the patient, or patient's guardian, of the proposed procedures, any available alternative procedures and any risks associated with the procedures. Following the explanation, the licensee shall ask the patient, or the patient's guardian, if there are any questions. The licensee shall provide thorough and easily understood answers to all questions asked and will document the discussion.

(19) "Intrapartum" means the period of time from the onset of labor through the birth of the baby.

(20) "License" means the document authorizing the holder to use the title Licensed Direct Entry Midwifery.

(21) "Licensed Direct Entry Midwife" means a person who meets the minimum qualifications for licensure under ORS 687.420 and is authorized by the Board to supervise the conduct of labor and childbirth; advise the parent as to the progress of the childbirth; render prenatal, intrapartum and postpartum care, and who meets the qualifications for reimbursement under medical assistance programs according to ORS 687.415.

(22) "Maternal exhaustion" means a condition in which the mother demonstrates a combination of clinical signs of compromise, such signs would include: elevated pulse over 100, extreme fatigue, dehydration, hypoglycemia, concentrated urine, ketonuria of 3 or greater, temperature over 101 degree Fahrenheit.

(23) "MANA" means the Midwives Alliance of North America.

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(24) “MEAC” means the Midwifery Education and Accrediting Council.

(25) “Midwife disclosure statement” means the written provision of information to clients which shall include but not be limited to: philosophy of care, midwifery training and education, clinical experience, services provided to clients, types of emergency medications and equipment used, fees for services including payment arrangements, responsibilities of the mother and her family, malpractice insurance coverage, and the address of the State Board of Direct Entry Midwifery.

(26) “NARM” means the North American Registry of Midwives.

(27) “Newborn examination” means the assessment of newborn well-being during the first hours of life.

(28) “Official transcript” means an original document certified by a school or educational institution, on a form approved by the Department of Education or regulating authority, delivered from the school to the agency by mail or courier, which includes:

- (a) School and location;
- (b) Student’s name, address and date of birth;
- (c) Enrollment and completion or termination dates;
- (d) Hours and types of course work;
- (e) Final examination scores;
- (f) School seal or stamp;
- (g) Signature of authorized school representative or registrar.

(29) “Pathology in childbirth” means the variations which significantly compromise the well being of mother, fetus, or newborn.

(30) “Peer review” means the discussion of cases with other care providers and students for the purpose of obtaining and providing suggestions regarding care.

(31) “Postpartum” means the period of time after the birth of the baby.

(32) “Practice” means the clinical procedures used in the conduct of direct entry midwifery.

(33) “Prenatal” means the encompassing period of time from conception to the onset of labor.

(34) “Primary birth attendant” means the midwife who assumes direct responsibility for the direct entry midwife/client relationship.

(35) “Re-Activated license” is a status of a person’s license when the person was previously licensed, but application was not made for renewal prior to the expiration of the previous license, but now has met qualifications for and has been re-issued a license.

(36) “Risk assessment” means the analysis of health compromising conditions relevant to pregnancy, birth and the postpartum period based on information gathered through interview, clinical examination and historical data. Risk categories are identified as follows:

(a) “Absolute Risk” means the conditions or clinical situations whereby a client presents an irresolvable obstetrical or neonatal risk which would preclude being an acceptable candidate for an out of hospital birth.

(b) “Non-Absolute risk” is a condition or clinical situation which places a client at increased obstetrical or neonatal risk, but does not automatically exclude a client from out-of-hospital birth.

(c) “Non-Absolute risk factor consultation” is the consultation required when a client presents with a non-absolute risk factor(s). This consultation shall be with at least one Oregon licensed health care provider as defined in section (6) of this rule.

(37) “Sharps” means items which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(38) “Valid license” means a license that is not expired, suspended or revoked.

Stat. Auth.: ORS 687.485

Stats. Implemented: ORS 183.450(7) & 687.485

Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1998, f. 2-27-98, cert. ef. 3-1-98; DEM 1-1999(Temp), f. 9-1-99, cert. ef. 9-9-99 thru 2-29-00; DEM 2-1999, f. 12-17-99, cert. ef. 12-20-99; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-015-0010

Standards for Qualifications for Licensure of Direct Entry Midwives

The agency shall review each applicant’s qualifications for licensure according to ORS 687.420 to determine whether sufficient knowledge in the practice of direct entry midwifery has been attained. Education consists of three components: theoretical knowledge base, skill instruction, and practical experience that are demonstrable in a clinical setting. Applicants must meet the following criteria:

(1) Education as determined by the Board in accordance with OAR 332-015-0040.

(2) Pursuant to ORS 687.420, participation in 25 assisted deliveries, 25 deliveries for which the midwife was the primary birth attendant, 100 prenatal care visits, 25 newborn examinations, and 40 postnatal examinations. Of these 50 births, at least 25 deliveries must have taken place in an out-of-hospital setting. The applicant must have provided continuity care for at least ten of the primary birth attendant deliveries, including four prenatal visits, one newborn examination and one postpartum exam.

(3) Current certification in cardiopulmonary resuscitation for adults and newborns, which includes newborn bag and mask ventilation, and required education in approved legend drugs and devices as provided in OAR 332-015-0070 to qualify for the license endorsement.

(4) A written plan for emergency transport; and

(5) Successful passage of Board approved examination(s) as set forth in OAR 332-015-0050.

Stat. Auth.: ORS 183, 687.420 & 687.430

Stats. Implemented: ORS 183, 687.420 & 687.430

Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1998, f. 2-27-98, cert. ef. 3-1-98; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-015-0030

Application Requirements

(1) Individuals applying for licensure to practice direct entry midwifery must meet the requirements of OAR 331-030-0000 in addition to the provisions of this rule.

(2) Applicants must submit an application form prescribed by the agency, which must contain the information listed in OAR 331-030-0000(5), and be accompanied by payment of the application and license fees, and include the following:

(a) Documentation of education as outlined in OAR 332-015-0040.

(b) Documentation of minimum clinical experiences as outlined in OAR 332-015-0010(2) and 332-015-0040.

(c) Current certification in cardiopulmonary resuscitation for adults and newborns, which includes newborn bag and mask ventilation.

(d) Documentation of required education in approved legend drugs and devices as provided in OAR 332-015-0070 if applying for the license endorsement.

(e) Written plan for emergency transport for mother and/or newborn.

(f) Submission of satisfactory evidence of passage of the NARM examination, which may include official documentation of a passing score of the Certified Professional Midwife (CPM) examination, or copy of the applicant’s CPM credential issued by the North American Registry of Midwives (NARM). Copies of examination results or other documentation provided by the applicant are subject to NARM verification.

(3) Applicants must attest by their signature on the application form to having received and read a copy of the Oregon laws and rules governing the practice of direct entry midwifery.

Stat. Auth.: ORS 687.420 & 687.485

Stats. Implemented: ORS 687.420 & 687.485

Hist.: DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1998, f. 2-27-98, cert. ef. 3-1-98; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-015-0040

Education

(1) All applicants must have completed the following minimum core competencies adapted from the 1997 Edition of the Midwives Alliance of North America (MANA) and approved by the Board:

(a) **General Knowledge and Skills:** The midwife provides care incorporating certain concepts, skills and knowledge from a variety of health and social sciences, including but not limited to:

(A) Communication, counseling and teaching skills.

(B) Human anatomy and physiology relevant to childbearing.

(C) Community standards of care for women and their developing infants during the childbearing cycle, including midwifery and bio-technical medical standards and the rationale for and limitations of such standards.

(D) Health and social resources in the community.

(E) Significance of and methods for documentation of care through the childbearing cycle.

(F) Informed decision-making.

(G) The principles and appropriate application of clean and aseptic technique and universal precautions.

(H) The selection, use and care of the tools and other equipment employed in the provision of midwifery care.

(I) Human sexuality, including indications of common problems and indications for counseling.

(J) Ethical considerations relevant to reproductive health.

(K) The grieving process.

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- (L) Knowledge of cultural variations.
- (M) Knowledge of common medical terms.
- (N) The ability to develop, implement and evaluate an individualized plan for midwifery care.
- (O) Woman-centered care, including the relationship between the mother, infant and their larger support community.
- (P) Knowledge of various health care modalities as they apply to the childbearing cycle.
- (b) **Care During Pregnancy (Antepartum):** The midwife provides health care, support and information to women throughout pregnancy. The midwife determines the need for consultation or referral as appropriate. The midwife uses a foundation of knowledge and/or skill which includes the following:
 - (A) Identification, evaluation and support of maternal and fetal well-being throughout the process of pregnancy.
 - (B) Education and counseling for the childbearing cycle.
 - (C) Preexisting conditions in a woman's health history, which are likely to influence her well-being when she becomes pregnant.
 - (D) Nutritional requirements of pregnant women and methods of nutritional assessment and counseling.
 - (E) Changes in emotional, psychosocial and sexual variations that may occur during pregnancy.
 - (F) Environmental and occupational hazards for pregnant women.
 - (G) Methods of diagnosing pregnancy.
 - (H) Basic understanding of genetic factors, which may indicate the need for counseling, testing or referral.
 - (I) Basic understanding of the growth and development of the unborn baby.
 - (J) Indications for, risks and benefits of bio-technical screening methods and diagnostic tests used during pregnancy.
 - (K) Anatomy, physiology and evaluation of the soft and bony structures of the pelvis.
 - (L) Palpation skills for evaluation of the fetus and uterus.
 - (M) The causes, assessment and treatment of the common discomforts of pregnancy.
 - (N) Identification of, implications of and appropriate treatment for various infections, disease conditions and other problems, which may affect pregnancy.
 - (O) Special needs of the Rh(D)-negative woman.
- (c) **Care During Labor, Birth and Immediately Thereafter (Intrapartum):** The midwife provides health care, support and information to women throughout labor, birth and the hours immediately thereafter. The midwife determines the need for consultation or referral as appropriate. The midwife uses a foundation of knowledge and/or skill which includes the following:
 - (A) The normal processes of labor and birth.
 - (B) Parameters and methods for evaluating maternal and fetal well-being during labor, birth and immediately thereafter, including relevant historical data.
 - (C) Assessment of the birthing environment, assuring that it is clean, safe and supportive, and that appropriate equipment and supplies are on hand.
 - (D) Emotional responses and their impact during labor, birth and immediately thereafter.
 - (E) Comfort and support measures during labor, birth and immediately thereafter.
 - (F) Fetal and maternal anatomy and their interactions as relevant to assessing fetal position and the progress of labor.
 - (G) Techniques to assist and support the spontaneous vaginal birth of the baby and placenta.
 - (H) Fluid and nutritional requirements during labor, birth and immediately thereafter.
 - (I) Assessment of and support for maternal rest and sleep as appropriate during the process of labor, birth and immediately thereafter.
 - (J) Causes of, evaluation of and appropriate treatment for variations which occur during the course of labor, birth and immediately thereafter.
 - (K) Emergency measures and transport procedures for critical problems arising during labor, birth or immediately thereafter.
 - (L) Understanding of and appropriate support for the newborn's transition during the first minutes and hours following birth.
 - (M) Familiarity with current bio-technical interventions and technologies which may be commonly used in a medical setting.
 - (N) Evaluation and care of the perineum and surrounding tissues.
- (d) **Care After Delivery (Postpartum Care):** The midwife provides health care, support and information to women throughout the postpartum

period. The midwife determines the need for consultation or referral as appropriate. The midwife uses a foundation of knowledge and/or skill which includes but is not limited to the following:

- (A) Anatomy and physiology of the mother during the postpartum period.
- (B) Lactation support and appropriate breast care including evaluation of, identification of and treatments for problems with nursing.
- (C) Parameters and methods for evaluating and promoting maternal well-being during the postpartum period.
- (D) Causes of, evaluation of and treatment for maternal discomforts during the postpartum period.
- (E) Emotional, psychosocial and sexual variations during the postpartum period.
- (F) Maternal nutritional requirements during the postpartum period including methods of nutritional evaluation and counseling.
- (G) Causes of, evaluation of and treatments for problems arising during the postpartum period.
- (H) Support, information and referral for family planning methods, as the individual woman desires.
- (e) **Newborn Care:** The entry-level midwife provides health care to the newborn during the postpartum period and support and information to parents regarding newborn care. The midwife determines the need for consultation or referral as appropriate. The midwife uses a foundation of knowledge and/or skill which includes the following:
 - (A) Anatomy, physiology and support of the newborn's adjustment during the first days and weeks of life.
 - (B) Parameters and methods for evaluating newborn wellness including relevant historical data and gestational age.
 - (C) Nutritional needs of the newborn.
 - (D) Community standards and state laws regarding indications for, administration of and the risks and benefits of prophylactic bio-technical treatments and screening tests commonly used during the neonatal period.
 - (E) Causes of, assessment of, appropriate treatment and emergency measures for newborn problems and abnormalities.
- (f) **Professional, Legal and Other Aspects:** The entry-level midwife assumes responsibility for practicing in accord with these core competencies. The midwife uses a foundation of knowledge and/or skill which includes the following:
 - (A) National documents concerning the art and practice of Midwifery.
 - (B) The principles and practice of data collection as relevant to midwifery care.
 - (C) Statutes and administrative rules governing the practice of midwifery in the local jurisdiction.
 - (D) Various sites, styles and modes of practice within the larger midwifery community.
 - (E) A basic understanding of maternal/child health care delivery systems in the local jurisdiction.
 - (F) Awareness of the need for midwives to share their knowledge and experience.
- (g) **Well-woman Care and Family Planning:** Depending upon education, the entry-level midwife may provide family planning and well-woman care. The practicing midwife may also choose to meet the following core competencies with additional education. In either case, the midwife provides care, support and information to women regarding their overall reproductive health, using a foundation of knowledge and/or skill which includes the following:
 - (A) Understanding of the normal life cycle of women.
 - (B) Evaluation of the woman's well-being including relevant historical data.
 - (C) Causes of, evaluation of and treatments for problems associated with the female reproductive system and breasts.
 - (D) Information on, provision of or referral for various methods of contraception.
 - (E) Issues involved in decision-making regarding unwanted pregnancies and resources for counseling and referral.
- (2) The education requirements may be satisfied by a combination of the following:
 - (a) Self study, including attending workshops, studying textbooks, reviewing video and audio tapes;
 - (b) Completion of education programs, including seminars, lectures, or classes;
 - (c) Participation in birth experiences as evidenced by letters from primary birth attendant and supported by delivery summaries, statistical data forms and/or prenatal summaries, and/or client provided documentation of such participation. If a client provides information, the client's consent for

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disclosure of medical records should be included. In the alternative, client-identifying information should be removed from the records.

(3) In the alternative to (2) above, education requirements may be met by satisfactory completion of certain midwifery education programs plus additional clinical experience, or by programs, which include clinical experience. Those applicants who have been awarded a NARM CPM credential or a certificate of completion or diploma from a MEAC accredited program will satisfy Board education requirements as long as they meet the standards of OAR 332-015-0010(2).

NOTE: A list of approved education programs is on file and available for review at the board office.

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

Stat. Auth.: ORS 183, 687.420, 687.480 & 687.485

Stats. Implemented: ORS 183, 687.420, 687.480 & 687.485

Hist.: DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1998, f. 2-27-98, cert. ef. 3-1-98; DEM 2-1998, f. 4-14-98, cert. ef. 4-15-98; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-015-0050

NARM Midwifery Examination

(1) The Board has selected the Certified Professional Midwifery examination administered by the North American Registry of Midwives (NARM) as its qualifying examination. Individual applicants are responsible for payment of all NARM application, examination, national certification or other fees directly to NARM.

(2) Applicants who meet the education and/or training requirements and achieve a passing score on the examination must request certification of the passing score be sent from the North American Registry of Midwives to the agency as a prerequisite to application.

Stat. Auth.: ORS 676.615, 687.480, 687.485

Stats. Implemented: ORS 676.615, 687.480, 687.485

Hist.: DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1998, f. 2-27-98, cert. ef. 3-1-98; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-015-0060

Application for Licensure Based on Equivalency

(1) An applicant who is currently licensed to practice direct entry midwifery in another state or who has been licensed within the past three years and who has not had a license suspended or revoked is eligible for licensure by equivalency.

(2) The requirements for licensure by equivalency are as follows:

(a) A completed application form and required documentation listed in OAR 332-015-0030;

(b) In lieu of documentation listed in OAR 332-015-0030(2)(f) evidence satisfactory to the Board that applicant has passed another state sponsored exam which the Board finds to be the equivalent of the NARM exam;

(c) Affidavit of Licensure from another state. An original signed and sealed or stamped form issued upon the request of an applicant licensed in another state and mailed directly to the agency by the state;

(d) Current certification in cardiopulmonary resuscitation for adults and newborns, which includes newborn bag and mask ventilation;

(e) Documentation of required education in approved legend drugs and devices as provided in OAR 332-015-0070.

(f) A written plan for emergency transport;

(g) Applicants shall attest by their signature on the application form to having received and read a copy of the Oregon laws and rules governing the practice of direct entry midwifery.

(h) Payment of the application and original license fees.

Stat. Auth.: ORS 676.605, 676.615, 687.420, 687.430, 687.485

Stats. Implemented: ORS 676.605, 676.615, 687.420, 687.430, 687.485

Hist.: DEM 1-1998, f. 2-27-98, cert. ef. 3-1-98; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-015-0065

License Endorsement

(1) A licensed midwife must complete the Board prescribed education requirements in OAR 332-015-0070 to be issued a license endorsement that authorizes access to and administration of legend drugs and devices.

(2) As of April 1, 2004, all Direct Entry Midwives applying for a new, renewal or reactivated license must have completed the Board prescribed education requirements in OAR 332-015-0070.

Stat. Auth.: ORS 676.605, 676.615, 687.485, 687.493

Stats. Implemented: ORS 676.605, 676.615, 687.485, 687.493

Hist.: DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-015-0070

Approved Legend Drugs and Devices Prescribed Education

To be granted a license endorsement authorizing access to administer legend drugs and devices an applicant or licensee must successfully com-

plete the *Basic Program Curriculum* consisting of 40 clock hours of instruction in the approved curriculum. Each licensed midwife shall also complete the *Renewal Program* every three years, consisting of 12.5 clock hours of continuing education. The *Basic Program* and the *Renewal Program* must be taught by a MEAC accredited or pre-accredited school, the Oregon Midwifery Council or by an organization authorized by the Board to provide continuing education. A list of approved sources of instruction shall be available from the agency. Both the Basic Program and the Renewal Program are comprised of theory, hands on practice and skills testing for competency.

(1) The Basic Program consists of:

(a) EIGHT CLOCK HOURS in Pharmacology covering drugs listed in OAR 332-025-0040 and 332-025-0050;

(A) Mechanism of Pharmacological Action;

(B) Indications;

(C) Therapeutic Effects;

(D) Side Effects/Adverse Reactions;

(E) Contraindications;

(F) Incompatibilities/Drug Interactions; and

(G) Drug administration including:

(i) Dosage;

(ii) Dosage Form and Packaging;

(iii) Routes of Administration;

(iv) Onset of Action;

(v) Peak Effect; and

(vi) Duration of Action.

(b) TWO CLOCK HOURS of administration of medications through injection, which includes:

(A) Universal precautions including the use and disposal of sharps;

(B) Equipment including:

(i) Needles;

(ii) Filter Needles (for use with glass ampules);

(iii) Syringes;

(iv) Skin surface disinfectants; and

(v) Medication containers (ampules, multi- and single-use vials).

(C) Appropriate injection sites;

(D) Procedures for drawing up and administering drugs;

(E) Special case: Administration of Medications Intravenously; and

(F) Care of equipment.

(c) SIXTEEN CLOCK HOURS in advanced treatment of shock, which includes:

(A) Theory of shock;

(B) Non-invasive treatment of shock;

(C) Intravenous fluid therapy;

(D) Purpose of IV fluid therapy;

(E) Equipment;

(F) Appropriate sites;

(G) Procedure;

(H) Rate of administration; and

(I) Care of equipment.

(d) SIX CLOCK HOURS in Maternal and neonatal resuscitation including:

(A) Basic life support techniques;

(B) Cardio-Pulmonary Resuscitation (CPR);

(C) Use of oxygen; and

(D) Positive pressure ventilation (bag, valve, mask).

(e) EIGHT CLOCK HOURS in suturing including:

(A) Assessing the degree of damage for repair;

(B) Use of local anesthetic;

(C) Equipment including:

(i) Suture;

(ii) Needles; and

(iii) Instruments.

(D) Use of needle holder and working with curved needle;

(E) Knot tying (Instrument knot);

(F) Basic stitching techniques including:

(i) Interrupted;

(ii) Basting;

(iii) Lock Blanket; and

(iv) Running mattress.

(G) Repairing the simple first-degree tear; and

(H) Repairing a second-degree tear.

(2) The Renewal Program consists of 12.5 clock hours drawn for the subjects covered in the Basic Program.

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(3) The requirements in subsection (1), for the *Basic Program Curriculum* consisting of 40 clock hours of instruction in the approved curriculum, must be completed within the three years immediately before the date of application for licensed endorsement in legend drugs and devices.

(4) Authority for licensed direct entry midwives to access and administer legend drugs and devices is contingent upon meeting continuing education requirements as a condition of license renewal. Refer to OAR 332-020-0010.

(5) A copy of Board approved curriculum objectives will be retained on file at the agency and made available upon receipt of a written request and payment of an administrative fee for acquiring public records. Refer to OAR 331-010-0030.

Stat. Auth.: ORS 676.615, ORS 687.485, 687.493
Stats. Implemented: ORS 676.615, ORS 687.485, 687.493
Hist.: DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-020-0000

License Issuance and Renewal; Reactivation

(1) **LICENSING:** Licensees are subject to the provisions of OAR 331-030-0010 regarding the issuance and renewal of a license, and to the provisions of OAR 331-030-0000 and 331-030-0020 regarding authorization to practice, identification, and requirements for issuance of a duplicate authorization.

(2) **RENEWAL:** License renewal must be made in advance of the license expiration date by submitting the following:

(a) Renewal application form;

(b) Payment of \$1,500 license renewal fee;

(c) Evidence of continuing education and peer review as required in subsection 3 of this rule, OAR 332-020-0010 and 332-025-0020(2);

(d) Evidence of current certification in cardiopulmonary resuscitation for adults and newborns, which includes newborn bag and mask ventilation; and

(e) Evidence of required education in approved legend drugs and devices as prescribed in OAR 332-015-0070 and subsection 3 of this rule.

(3) **CONTINUING EDUCATION ATTESTATION:** Applicants for license renewal must submit the completed renewal form, with their signature affixed as attestation to completion of required continuing education hours. Documentation of continuing education hours earned must be provided to the agency only when selected for audit. Refer to OAR 332-020-0015.

(4) Any license that is not renewed prior to the license expiration date will automatically revert to inactive status.

(5) **REACTIVATION:** Direct entry midwives may reactivate a license within three years from date of expiration by submitting the following:

(a) Re-activation application form;

(b) Payment of required fees: \$100 application, \$300 reactivation and \$1,500 license;

(c) Continuing education and peer review as required in OAR 332-020-0010 and 332-025-0020(2);

(d) Evidence of required education in approved legend drugs and devices as provided in OAR 332-015-0070;

(e) Evidence of current certification in cardiopulmonary resuscitation for adults and newborns, which includes newborn bag and mask ventilation;

(f) Failure to meet requirements set forth in subsections (c) through (e) within three years from the date of license expiration will require passage of a Board approved national examination within one year preceding the date of application for reactivation of license. Verification of successful passage of the examination must be sent directly to the agency from the originating authority.

(6) Direct entry midwives who have not reactivated their license within three years of the expiration date, and who have not engaged in active practice, may be granted a reactivated license after submission of the following:

(a) Re-activation application form;

(b) Payment of required fees: \$100 application, \$500 reactivation and \$1,500 license;

(c) Evidence of current certification in cardiopulmonary resuscitation for adults and newborns, which includes newborn bag and mask ventilation;

(d) Evidence of required education in approved legend drugs and devices, the basic course that is 40 hours if three years have passed, as provided in OAR 332-015-0070;

(e) Evidence of successful passage of a Board approved examination within one year preceding the date of application for reactivation of license. Verification of successful passage of the examination must be sent directly to the agency from the originating authority.

(7) An applicant who was previously licensed in Oregon and who has been engaged in the active practice of direct entry midwifery during the last three years preceding reapplication for Oregon licensure will not be required to pass the written examination for reactivation according to ORS 687.425, if the following documentation and fees are submitted:

(a) Re-activation application form and requirements listed in OAR 331-030-0000;

(b) Payment of required fees: \$100 application, \$500 reactivation and \$1,500 license;

(c) Verification of active practice of direct entry midwifery through submission of tax records, client letters, or participation in peer review. Documentation must substantiate practice with an average of five clients per year with a minimum of 15 clients in a three-year period;

(d) Evidence of continuing education and peer review as required in OAR 332-020-0010 and 332-025-0020(2);

(e) Evidence of current certification in cardiopulmonary resuscitation for adults and newborns, which includes newborn bag and mask ventilation;

(f) Evidence of required education in approved legend drugs and devices as provided in OAR 332-015-0070;

(g) Failure to meet requirements set forth in subsections (7)(c) through (f) of this rule will require passage of a Board approved national examination within one year preceding the date of application for reactivation of license. Verification of successful passage of the examination must be sent directly to the agency from the originating authority.

Stat. Auth.: ORS 676.605, 676.615, 687.420, 687.425, 687.430, 687.485, 687.493
Stats. Implemented: ORS 676.605, 676.615, 687.420, 687.425, 687.430, 687.485, 687.493
Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-020-0010

Continuing Education

(1) **HOURLY REQUIREMENTS:** To qualify for license renewal a direct entry midwife must complete approved continuing education every three years from the date of initial licensure or as specified for issuance, renewal and reactivation of the license with endorsement for administration of legend drugs and devices. The number of required hours is as follows:

(a) Forty-five (45) clock hours pertaining to scope of practice issues, standards of midwifery care, the law and rules regulating the practice of direct entry midwifery, science, health care professional concerns such as infection control or medical emergencies, ethics, and business practices. Infection control, as used in this rule section, includes but is not limited to appropriate protocols for labeling, handling and disposing of bio-hazard products, including sharps and medical waste; exposure to blood-borne pathogens and prevention of cross-contamination through appropriate sterilization, disinfection, hand-washing and gloving standards, and correct disposal of articles/items in contact with blood and/or bodily fluids.

(b) Twelve and one half (12.5) clock hours pertaining to Board approved legend drugs and devices as referenced in OAR 332-025-0040, 332-025-0050, and 332-025-0060, which includes current information on approved drugs, administration procedures, treatment of shock including IV therapy, maternal and neonatal resuscitation and suturing. Education must consist of theory, hands on practice, and skills testing for competency assurance. The 12.5 clock hours of education applies after completion of the initial approved 40 course hours for license endorsement to administer legend drugs and devices.

(2) **CONTINUING EDUCATION PROVIDERS/SPONSORS:** Continuing education includes attendance or participation at an instructional program presented, recognized, or under the auspices of any Board approved permanently organized institution or professional organization or association:

(3) CONTINUING EDUCATION PATHWAYS:

(a) Attendance at lectures, post-secondary school or postgraduate courses, scientific sessions at conventions, courses offered by an approved association or licensed/accredited school, classes or courses offered through an institution such as the American Red Cross, hospitals, health care clinics, correspondence courses or internet courses.

(b) Continuing education relating to subject matter listed in subsection (1)(a) of this rule may be also be obtained through research or teaching (provided that no more than half the required hours be in teaching).

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(c) Up to nine clock hours of continuing education relating to subject matter listed in subsection (1)(a) of this rule may be completed through self-study and documented on forms provided by the agency.

(4) **DOCUMENTATION REQUIREMENTS:** Submission to the agency of proof of participation in continuing education is the responsibility of the direct entry midwife. The following provisions specify requirements for documenting completion of continuing education:

(a) Documentation shall include the name of the sponsoring institution, association or organization, title of presentation, description of content, name of instructor or presenter, date, duration in hours, and license or statement of attendance or completion provided by the sponsor.

(b) Documentation verifying completion of all required continuing education shall be accumulated and held by the direct entry midwife for three years following any reporting period, or until notification of audit is received. Continuing education documentation must be available and provided to the agency upon request. Refer to OAR 332-020-0015.

(5) **ADDITIONAL REQUIREMENTS AND PROVISIONS:** In addition to other requirements specified in this rule section, the following provisions apply toward meeting continuing education requirements as a condition of license renewal and reactivation:

(a) A midwife who has attended fewer than five births in the previous year shall be required to take an additional 10 hours of continuing education specific to basic midwifery practice outlined in subsection (1)(a) of this rule.

(b) Failing to obtain the prescribed number of clock hours and/or complete appropriate continuing education content must reapply and meet requirements listed in OAR 332-015-0030.

(c) Hours of continuing education that are obtained in "excess" of the minimum requirements listed in subsection (1)(a) and (b) of this rule will not be carried forward as credit for the subsequent license renewal reporting cycle.

(d) Continuing education is required for renewal even if the direct entry midwife license has been inactive, revoked or suspended during that period.

(6) Notwithstanding subsection (1) of this rule, the agency may adjust the requirements for legend drugs and devices continuing education to coincide with the licensee's current continuing education three year reporting period.

Stat. Auth.: ORS 676.615, 687.425, 687.485
Stats. Implemented: ORS 676.615, 687.425, 687.485
Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-020-0015

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Health Licensing Office will audit a select percentage of licenses determined by the Board to verify compliance with continuing education requirements.

(2) Practitioners notified of selection for audit of continuing education attestation must submit to the agency, within 30 calendar days from the date of notification, satisfactory evidence of participation in required continuing education in accordance with OAR 332-020-0010.

(3) Documentation of a certificate of completion of attendance at a program or course provided by the sponsor must include:

- (a) Name of sponsoring institution/association or organization;
- (b) Title of presentation and description of content;
- (c) Name of instructor or presenter;
- (d) Date of attendance and duration in hours;
- (e) Course agenda;
- (f) Official transcript, diploma, certificate, statement or affidavit from the sponsor, attesting to attendance.

(4) If documentation of continuing education is invalid or incomplete, the licensee must correct the deficiency within 30 calendar days from the date of notice. Failure to correct the deficiency within the prescribed time shall constitute grounds for disciplinary action.

(5) Misrepresentation of continuing education, or failing to meet continuing education requirements or documentation may result in disciplinary action, which may include but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth.: ORS 687.425, 687.485
Stats. Implemented: ORS 687.425, 687.485
Hist.: DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-020-0020

Fees

(1) Applicants and licensees are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding payment of fees, penalties and charges.

(2) Fees established by the Health Licensing Office, in consultation with the Board, are as follows:

- (a) Application fee: \$100;
- (b) Issuance of initial or renewal license: \$1,500;
- (c) Issuance of reactivated license: \$1,500;
- (d) Duplicate license: \$25;
- (e) Late renewal fee: \$50;
- (f) Reactivation fee (within three years from date of expiration): \$300;

(g) Reactivation fee (expired over three years): \$500.

Stat. Auth.: ORS 676.605, 676.615, 687.435, 687.485
Stats. Implemented: ORS 676.605, 676.615, 687.435, 687.485
Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1997(Temp), f. 7-22-97, cert. ef. 7-23-97; DEM 1-1999(Temp), f. 9-1-99, cert. ef. 9-9-99 thru 2-29-00; DEM 2-1999, f. 12-17-99, cert. ef. 12-20-99; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-025-0020

Practice Standards

Pursuant to ORS 687.480, licensed direct entry midwives shall comply with the following practice standards when supervising the conduct of labor and childbirth, advising the parent and, in rendering prenatal, intrapartum and postpartum care.

(1) To facilitate the cooperation of collection and reporting data on births in accordance with ORS 687.480 and 687.495, a licensed direct entry midwife shall include the designation L.D.M. after their name when completing birth certificates; and

(2) As a condition of license renewal, licensed direct entry midwives shall participate in peer review meetings in their regions or in conjunction with professional organization meeting(s), which shall include, but not be limited to the discussion of cases, and obtaining feedback and suggestions regarding care. Documentation shall be made on forms approved by the Board. Licensees shall participate in peer review according to the following schedule:

(a) Once per year if the licensee performed as the primary birth attendant at less than 40 births during the license year; or

(b) Twice per year if the licensee performed as the primary birth attendant at more than 40 births during the license year.

(3) A general explanation of the midwife's emergency transport plan shall be included in the client disclosure form to be given to the client. It shall include but not be limited to destination of transport; mode of transport; and provision for delivery equipment to be carried in the vehicle.

(4) Licensed direct entry midwives shall maintain equipment necessary to: assess maternal, fetal and newborn well being; maintain aseptic technique; respond to emergencies requiring immediate attention; and resuscitate mother and newborn when attending an out-of-hospital birth. In accordance with ORS 687.480(4) and 687.493(2), the Board recommends the following equipment as a guideline for licensed direct entry midwives;

- (a) Anti-hemorrhagic agents;
- (b) Antiseptic scrub;
- (c) Birth certificates;
- (d) Blood pressure cuff;
- (e) Bulb syringe;
- (f) Equipment for amniotomy;
- (g) Equipment for administering injections;
- (h) Flashlight or lantern and batteries;
- (i) Heat source for newborn resuscitation;
- (j) Infant and adult resuscitation equipment;
- (k) Infant suction catheter with mucus trap;
- (l) Labor, delivery postpartal and statistics records forms;
- (m) Nitrazine paper;
- (n) Scales and measuring tape;
- (o) Sealable plastic containers for blood and bodily fluids;
- (p) Sharps and rigid sealable containers;
- (q) Sterile and non-sterile exam gloves;
- (r) Stethoscope and fetoscope;
- (s) Thermometer
- (t) Three hemostats;
- (u) Umbilical cord occlusion devices;
- (v) Urine dipsticks;
- (w) Venipuncture equipment;
- (x) Equipment for administering intravenous fluids; and

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(y) Approved legend drugs/medications and devices listed in OAR 332-025-0040, 332-025-0050 and 332-025-0060.

(5) Licensed direct entry midwives shall ensure that mandatory services for newborns are provided in accordance with the provisions of OAR 333-021-0800 and 333-024-0205 through 0235.

(6) Licensed direct entry midwives who satisfactorily complete the Board approved education are authorized by license endorsement for access to and administration of legend drugs and devices, including items used for perineal and labial repair, amnihooks, infant suction catheter with mucus trap in the performance of services in accordance with ORS 687.405(3) and 687.493(2).

(7) Licensed direct entry midwives shall dispose of pathological waste resulting from the birth process in accordance with Oregon State Health Division provisions:

(a) Incineration, provided the waste is properly containerized at the point of generation and transported without compaction to the site of incineration; or

(b) Burial on private property if burial of human remains on such property is not prohibited or regulated by a local government unit at the designated site. Such burials shall be made in accordance with the provisions of the local government unit and the Department of Human Services, Health Services.

(8) Licensed direct entry midwives shall dispose of biological waste materials, which come into contact with blood and/or body fluids in a sealable plastic bag (separate from sealable trash or garbage liners) or in a manner that protects the licensee and the client and others who may come into contact with the material during disposal. Biological wastes may also be incinerated or autoclaved in equipment dedicated to treatment of infectious wastes.

(9) Licensed direct entry midwives shall dispose of sharps which come into contact with blood or bodily fluids in a sealable rigid (puncture proof) container that is strong enough to protect the licensee and the client and others from accidental cuts or puncture wounds during the disposal process.

(10) Sharps shall be placed into appropriate containers at the point of generation and may be transported without compaction to a landfill having an area designed for sharps burial or transported to an appropriate health care facility equipped to handle sharps disposal, provided the lid of the container is tightly closed or taped to prevent the loss of content and the container is appropriately labeled.

(11) Licensees shall maintain a midwife disclosure statement providing current and accurate information to prospective clients and must provide clients with this information. This statement must include but not be limited to:

- (a) Philosophy of care;
- (b) Midwifery training and education;
- (c) Clinical experience;
- (d) Services provided to clients;
- (e) Types of emergency medications and equipment used;
- (f) Responsibilities of the mother and her family;
- (g) Fees for services including financial arrangements;
- (h) Malpractice coverage.

(12) Licensees shall maintain a plan for emergency transport and must discuss the plan with the client. The plan must include but not be limited to:

- (a) Place of transport;
- (b) Mode of transport;
- (c) Provisions for physician support and hospital including location and telephone numbers; and
- (d) Availability of private vehicle or ambulance including emergency delivery equipment carried in the vehicle.

(13) Licensees shall maintain accurate written client records documenting the course of midwifery care.

Stat. Auth.: ORS 676.605, 676.615, 687.480, 687.485
Stats. Implemented: ORS 676.605, 676.615, 687.480, 687.485
Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 2-1998, f. 4-14-98, cert. ef. 4-15-98; DEM 1-1999(Temp), f. 9-1-99, cert. ef. 9-9-99 thru 2-29-00; DEM 2-1999, f. 12-17-99, cert. ef. 12-20-99; DEM 2-2000(Temp), f. 8-22-00, cert. ef. 8-22-00 thru 2-17-01; DEM 2-2000(Temp), f. 8-22-00, cert. ef. 8-22-00 thru 2-17-01; DEM 3-2000, f. 9-29-00, cert. ef. 10-1-00; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; Administrative correction 11-7-01; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-025-0021

Risk Assessment Criteria

Licensed direct entry midwives shall assess the appropriateness of an out-of-hospital birth for each client, taking into account the health and condition of the mother and fetus or baby according to the following two categories of risk assessment criteria in determining appropriate care:

(1) "Absolute risk" as defined in OAR 332-015-0000(36)(a). Clients who present one or more of the following absolute risk factors are not appropriate candidates for out-of-hospital birth:

(a) When absolute risk factors are present during the antepartum period, the midwife and the client must plan for an in-hospital birth;

(b) When absolute risk factors appear during the intrapartum period, the midwife must arrange to have the client transported to the hospital unless the birth is imminent;

(c) When absolute risk factors appear when the birth is imminent the midwife must take the health and condition of the mother and baby into consideration in determining whether to proceed with out-of-hospital birth or arranging for transportation to a hospital;

(d) When absolute risk factors appear postpartum, the midwife must immediately arrange for transportation to a hospital;

(e) When absolute risk factors appear in the infant, the midwife must immediately arrange for transportation to a hospital.

(2) The following constitute absolute risk factors:

(a) **ANTEPARTUM ABSOLUTE RISK CRITERIA:** active cancer; cardiac disease; severe renal disease — active or chronic; severe liver disease — active or chronic; uncontrolled hyperthyroidism; chronic obstructive pulmonary disease; essential chronic hypertension over 140/90; pre-eclampsia / eclampsia; acute or chronic thrombophlebitis; current substance abuse known to cause adverse effects; incomplete spontaneous abortion; hemoglobin under 9 at term; placental abruption; placenta previa at onset of labor; persistent severe abnormal quantity of amniotic fluid; blood coagulation defect; amnionitis; ectopic pregnancy; pregnancy lasting longer than 43 weeks gestation (21 days past the due date); pregnancy lasting longer than 42 weeks (14 days past the due date) with an abnormal non-stress test; any pregnancy with abnormal fetal surveillance tests; rupture of membranes for greater than 72 hours before the onset of labor with chorioamnionitis; secondary herpes that cannot be covered at the onset of labor; HIV positive status with AIDS; higher order multiples (3 or more).

(b) **INTRAPARTUM ABSOLUTE RISK CRITERIA:** documented IUGR at term; suspected uterine rupture; active herpes lesion in an unprotected area; prolapsed cord or cord presentation; suspected complete or partial placental abruption; suspected placental previa; suspected chorioamnionitis; pre-eclampsia/eclampsia; thick meconium stained amniotic fluid without reassuring fetal heart tones and birth is not imminent; evidence of fetal distress or abnormal fetal heart rate pattern unresponsive to treatment or inability to auscultate fetal heart tones; excessive vomiting, dehydration, acidosis or exhaustion unresponsive to treatment; blood pressure greater than or equal to 150/100 which persists or rises, and birth is not imminent; maternal exhaustion; fetal distress; labor or PROM less than 35 weeks according to due date; current substance abuse.

(c) **MATERNAL POSTPARTUM ABSOLUTE RISK CRITERIA:** retained placenta with suspected placenta accreta; retained placenta with abnormal or significant bleeding; laceration requiring hospital repair; uncontrolled postpartum bleeding; increasingly painful or enlarging hematoma; development of pre-eclampsia; signs or symptoms of shock unresponsive to treatment.

(d) **INFANT ABSOLUTE RISK CRITERIA:** Apgar less than 7 at 10 minutes of age; respiration rate greater than 80 within the first 2 hours postpartum, and greater than 60 thereafter, accompanied by any of the following lasting more than one hour without improvement: nasal flaring, grunting, or retraction; cardiac irregularities, heart rate less than 80 or greater than 160 (at rest) without improvement, or any other abnormal or questionable cardiac findings; seizures; evidence of infectious process; apnea; central cyanosis; large or distended abdomen; any condition requiring more than 12 hours of observation postbirth; gestational age under 35 weeks; persistent poor suck, hypotonia or a weak or high pitched cry; persistent projectile vomiting or emesis of fresh blood; any infant with active AIDS; signs and symptoms of infection in the newborn.

(3) "Non-absolute" risk as defined in OAR 332-015-0000(36)(b). Clients who present one or more non-absolute risk factor are at increased obstetric or neonatal risk. When one or more non-absolute risk factor presents, the midwife must either arrange for the transport or transfer of care of the client(s) or comply with all of the following:

(a) Consult with at least one Oregon licensed health care provider as defined in OAR who has direct experience handling complications of the risk(s) present as well as the ability to confirm the non-absolute risk. Additional complicating factors identified by the consultant must be considered in order to determine if a home birth is indicated. The midwife must consult with the provider(s) regarding appropriate care related to the birth considering the following: the risks present, the risks anticipated, the midwife's experience, the birth setting, and the ease and time involved in

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obtaining emergency transport or transfer of care. The consultation(s) must be documented in the client records, including all recommendations given by the provider(s). The consultation(s) may be conducted in person or by direct telephone conversation depending on the clinical and geographical situation.

(b) Determine whether a home birth is a reasonably safe option based upon the risks present, the anticipated risks, the likelihood of reducing or eliminating said risks, the midwife's experience, the birth setting, the ease and time involved in obtaining emergency transport or transfer of care and the recommendation of the licensed health care provider(s) with whom the midwife consulted.

(c) Advise the client regarding the non-absolute risk(s), possible adverse outcomes, and the recommendation(s) given by the licensed health care provider(s) with whom the midwife consulted.

(d) Document the advice given to the client by the midwife and, if applicable, obtain the client's informed consent to proceed with an out-of-hospital birth. In addition, to the extent the midwife acts contrary to the recommendation(s) given by the licensed health care provider(s) with whom the midwife consulted, the midwife must document the reasons justifying acting contrary to the provider's recommendations and obtain informed client consent.

(4) The following are non-absolute risk factors:

(a) **MATERNAL ANTEPARTUM NON-ABSOLUTE RISK CRITERIA:** conditions requiring on-going medical supervision or on-going use of medications; significant glucose intolerance; inappropriate fetal size for gestation; significant 2nd or 3rd trimester bleeding; abnormal fetal cardiac rate or rhythm, or decrease of movement; uterine anomaly; anemia (hematocrit less than 30 or hemoglobin less than 10 at term; seizure disorder requiring prescriptive medication; platelet count less than 75,000; previous uterine incision other than low transverse cesarean and/or myomectomy with review of surgical records and/or subsequent birth history; isoimmunization to blood factors; psychiatric disorders; history of thrombophlebitis and hemoglobinopathies; twin gestation; malpresentation at term.

(b) **INTRAPARTUM NON-ABSOLUTE RISK CRITERIA:** no prenatal care or unavailable records; maternal exhaustion unresponsive to treatment; history of substance abuse during this pregnancy; or malpresentation unless birth is imminent; persistent unexplained fever > 101 degrees Fahrenheit (38 degrees Centigrade) taken orally; labor or PROM 35-36 weeks according to due date.

(c) **MATERNAL POSTPARTUM NON-ABSOLUTE RISK CRITERIA:** infectious process; any condition requiring more than 12 hours of postpartum observation; retained placenta greater than 3 hours.

(d) **INFANT NON-ABSOLUTE RISK CRITERIA:** Apgar less than 7 at 5 minutes without improvement; weight less than 2270 grams (5 lbs.); jitteriness; failure to void within 24 hours or stool within 48 hours from birth; maternal substance abuse identified intrapartum or postpartum; excessive pallor, ruddiness, or jaundice at birth; any generalized rash at birth; birth injury such as facial or brachial palsy, suspected fracture or severe bruising; baby with signs and symptoms of hypoglycemia; weight decrease in excess of 10% of birth weight; maternal-infant interaction problems; direct Coomb's positive cord blood; infant born to HIV positive mother; and major congenital anomaly; gestational age of 35-36 weeks; inability to maintain axillary temperature between 97-100 degrees Fahrenheit.

(5) In the event that the client refuses transport for herself or her infant upon the midwife's recommendation for absolute, non-absolute, or other risk factors, the midwife must:

(a) Document the midwife's discussion including potential adverse/fatal outcomes with the client that the out of hospital care is no longer appropriate, and document the client's refusal to transport, with client's signature in the chart; and

(b) If the situation is immediately life-threatening for the mother or infant or if, in the midwife's judgment it is warranted, activate the 911 emergency response system.

(6) Under no circumstances shall the midwife leave the client until such a time that transport is arranged and another care provider assumes care, or until the situation is satisfactorily resolved.

Stat. Auth.: ORS 676.605, 676.615, 687.480, 687.485

Stats. Implemented: ORS 676.605, 676.615, 687.480, 687.485

Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 2-1998, f. 4-14-98, cert. ef. 4-15-98; DEM 1-1999(Temp), f. 9-1-99, cert. ef. 9-9-99 thru 2-29-00; DEM 2-1999, f. 12-17-99, cert. ef. 12-20-99; DEM 2-2000(Temp), f. 8-22-00, cert. ef. 8-22-00 thru 2-17-00; DEM 2-2000(Temp), f. 8-22-00, cert. ef. 8-22-00 thru 2-17-01; DEM 3-2000, f. 9-29-00, cert. ef. 10-1-00; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; Administrative correction 11-7-01; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-025-0022

Standards of Care

Standards of care for the determination of initial visits, laboratory tests, prenatal visits, education/counseling/anticipatory guidance, emergency access, intrapartum care, postpartum care, and newborn care include:

(1) **INITIAL VISITS:** In the first prenatal visits, the following history shall be taken including but not be limited to: health, reproductive, family, social and current pregnancy. The primary care giver will evaluate nutritional status, height, weight and blood pressure, uterine size relative to gestational age, urinary analysis.

(2) **DIAGNOSTIC TESTS:** Pursuant to ORS 438.430, the Board authorizes licensed direct entry midwives to order and receive laboratory and ultrasound results. Licensed direct entry midwives shall recommend the following tests: CBC; minor blood factor antibody screen; STD and syphilis screening; Hepatitis B surface antigen; blood group and Rh type; rubella titer; ultrasound and Pap Smear if indicated.

(3) **PRENATAL VISITS:** The following schedule of prenatal visits is recommended: every four weeks for the first 32 weeks, every two to three weeks until 36 weeks, and weekly thereafter. Each visit must include the interval history and physical examination, including blood pressure, weight, fundal height, fetal presentation, fetal heart rate, evaluation of urine for protein and glucose with a dipstick, and the mother's assessment of fetal activity. The midwife shall assess the breasts for nursing. The midwife must continuously evaluate the pregnancy for risks taking into consideration information derived from physical examination, laboratory tests, maternal complaints, documented history, and the overall physical and emotional well being of the mother. The family must be kept informed of these risks. A home visit must be conducted before labor and include assessment of the birthing environment including telephone access.

(4) **ASSESSMENT OF FETAL WELL-BEING:** At 41 weeks, midwives shall conduct one of the following tests:

(a) Non-stress test or accelerated auscultation test every three to four days, with an amniotic fluid index at 42 weeks; or,

(b) Biophysical profile weekly.

(5) **EDUCATION/COUNSELING/ANTICIPATORY GUIDANCE:** The midwife must offer information or referral to community resources on childbirth preparation, breast-feeding, exercise and nutrition, parenting, and care of the newborn. Using the informed consent process, birth attendants must inform pregnant women and their families about available obstetric and pediatric tests and procedures, multiple genetic marker screen, chorionic villi sampling, amniocentesis, prenatal Rho immune globulin, ultrasound, human immunodeficiency virus (HIV) counseling and testing, newborn metabolic screening, eye prophylaxis, herpes testing and treatment, neonatal vitamin K and circumcision. The midwife shall counsel the parents regarding the current Centers for Disease Control (CDC) protocol regarding Group B Strep testing, and document the client's informed consent.

(6) **ACCESS:** Each licensed direct entry midwife shall provide a mechanism that ensures twenty-four hour coverage for the practice.

(7) **INTRAPARTUM CARE:**

(a) Assessment during labor: The following parameters shall be included as part of the initial assessment of a laboring woman and her baby as indicated: maternal temperature, blood pressure, pulse, frequency, duration and intensity of uterine contractions, and the physical and emotional environment. Fetal well-being shall also be assessed which includes fetal lie, position, and presentation, fetal movement, heart rate before, during and after uterine contractions, fetal scalp color as appropriate, and if relevant, the color, odor and clarity of amniotic fluid. Appropriate assessment of mother and fetus should be ongoing during labor including regular assessment of fetal heart tones.

(b) Fetal heart tones shall be evaluated as soon as possible following rupture of membranes. For clients without signs of risk factors, during the active phase of the first stage of labor, the fetal heart rate shall be evaluated at least every 30-60 minutes. For those clients with risk factors, fetal heart tones shall be auscultated more frequently in active stage of labor. Fetal heart tones shall be auscultated approximately every 5 to 10 minutes or after every contraction as indicated with active pushing

(c) Premature rupture of membranes at term: When a client reports suspected rupture of membranes before the onset of labor at 37 weeks gestation or greater, timely evaluation must include obtaining a careful history, documentation of ruptured membranes, and evaluation for the presence of infection and/or fetal distress. Clients must be instructed in measures to prevent and identify infection. No vaginal examination shall be performed until the client is in active labor, unless cord prolapse is suspected.

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(d) Physiologic care during labor: The primary care giver must make certain that the mother is receiving nourishing, easily digestible foods and adequate fluid throughout labor. The woman must be encouraged to urinate every one to two hours.

(8) POSTPARTUM CARE:

(a) Postpartum assessment and care: The maternal pulse, uterine fundus, and lochia must be checked within the first 15 minutes. The uterine fundus and lochia discharge shall be checked regularly for the first hour after birth and thereafter until the woman's condition is stable. The perineum and vagina shall be inspected for lacerations. If any required repair does not fall within the expertise of the primary care giver, arrangements must immediately be made for transfer or proper attendance. Before the primary care giver leaves or the family is discharged, the placenta must be delivered and the mother's general condition, blood pressure, pulse, temperature, fundus, lochia, and ability to ambulate and urinate must be assessed and found to be within normal limits. The primary care giver or other qualified persons must stay with the mother and infant until both are stable and secure and at least two hours have passed since the birth. The family must be instructed to make certain that someone is with the mother at all times during the first twenty-four hours and that she receives support and care for at least the first few days.

(b) Postpartum instructions: The family must be provided with instructions that include: self and baby care and hygiene, signs of infection and methods for prevention (mother and infant), signs of illness in the newborn, normal infant feeding patterns, uterine massage and normal parameters of lochial flow. Safety in the home and car, emotional needs, the changes in family dynamics, and the importance of rest, fluids, and good nutrition must be reviewed. Further follow-up must be arranged and instructions for the reporting of problems or deviation from normal will be given. Parents will be encouraged to contact the primary care giver with any questions or concerns.

(c) Laboratory studies/medications: Rubella vaccine must be discussed with non-immune women postpartum. A Rho Immune Globulin workup must be done for Rh negative women, including cord blood. Unsensitized Rh-negative women who have given birth to an Rh-positive infant must be given Rho immune globulin intramuscularly within 72 hours post-birth.

(d) Follow-up: Postpartum follow-up care must minimally include: visits during the first 24 to 36 hours following birth, at 3 to 4 days to assess mother and baby, and a visit or telephone consultation within 1 to 2 weeks post-birth. The primary care giver must continue to monitor appropriate vital signs, and physical and social parameters including adequacy of support systems and signs of infection. Information must be provided regarding lactation, postpartum exercise, and community resources available. Education may be provided on various family planning methods. Those midwives who are qualified to fit barrier methods of contraception may do so at the six-week check up.

(9) NEWBORN CARE:

(a) Newborn assessment and care: Newborn assessment must include the monitoring of temperature, pulse, and respirations each hour for the first two hours post-birth and thereafter until stable. A thorough physical examination must be done shortly after birth including assessment of length, weight, head circumference, fontanel, palate, heart, lungs, abdomen, genitalia, muscular and skeletal system, dislocated hips, back, buttocks, rectum, assessment of neurological status (including assessment for jitteriness or lethargy as well as the presence of normal newborn reflexes), and general appearance. A gestational age assessment must be done. The family must be informed of any deviation from normal. The primary care giver or another qualified person must stay with the family until a minimum of two hours post-birth have passed, all parameters of physical assessment are found to be within normal limits, and the infant has demonstrated normal suck and swallow reflexes.

(b) Laboratory studies/medications/birth registrations: Out-of-hospital care providers must adhere to state guidelines for the administration of vitamin K and ophthalmic prophylaxis. Infant metabolic screening shall be performed and/or documented according to the Department of Human Services, Health Services recommendations unless the parent declines, which requires obtaining a signed informed consent to be retained in the client's record. Additional laboratory studies may be warranted as determined by the infant's condition or pediatric consultation. All births must be registered with the Department of Human Services, Health Services, Vital Records Section.

(c) Prolonged rupture of membranes: If the birth has taken place more than twenty four hours after rupture of membranes, the baby must be closely observed for twenty-four hours for signs and symptoms of infection.

(d) Follow-up: It is recommended that follow-up care include: a visit within 24 to 36 hours following birth, at 3 to 4 days, visit or telephone consultation within 1 to 2 weeks post-birth, and a visit at 6 weeks of age to monitor appropriate vital signs, weight, length, head circumference, color, infant feeding, and sleep/wake and stool/void patterns. Information must be provided about infant safety and development issues, immunization, circumcision, and available community resources.

(10) In the event that the client refuses any testing or procedures required by administrative rule or recommended by the midwife, the midwife shall document client education and discussion with the client of why the test or procedure is required or recommended, and document the client's informed consent and refusal of the test or procedures, including client's signature in the chart.

Stat. Auth.: 676.605, 676.615, 687.480, 687.485

Stats. Implemented: 676.605, 676.615, 687.480, 687.485

Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 2-1998, f. 4-14-98, cert. ef. 4-15-98; DEM 1-1999(Temp), f. 9-1-99, cert. ef. 9-9-99 thru 2-29-00; DEM 2-1999, f. 12-17-99, cert. ef. 12-20-99; DEM 2-2000(Temp), f. 8-22-00, cert. ef. 8-22-00 thru 2-17-00; DEM 2-2000(Temp), f. 8-22-00, cert. ef. 8-22-00 thru 2-17-01; DEM 3-2000, f. 9-29-00, cert. ef. 10-1-00; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; Administrative correction 11-7-01; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-025-0030

Access to and Administration of Legend Drugs and Devices

Pursuant to ORS 687.493, a licensed direct entry midwife who satisfactorily completes the prescribed education outlined in OAR 332-015-0070 is authorized access to and administration of specific legend drugs and devices listed in OAR 332-025-0040, 332-025-0050, and 332-025-0060. The following requirements shall be adhered to:

(1) Licensed midwives shall comply with all local, state and federal laws and regulations regarding the administration, distribution, storage, transportation and disposal of approved legend drugs and devices listed in OAR 332-025-0040 through 332-025-0060.

(2) Approved legend drugs must be inventoried and securely stored by the midwife at all times the product is not in use, including samples or any remaining portion of a drug.

(3) Records regarding approved legend drugs and devices shall be maintained for a period of three years. Records shall be kept on the business premises and available for inspection upon request by the Health Licensing Office Enforcement Officers. Upon request by the Board or agency, a licensed midwife shall provide a copy of records. Records shall include, but not be limited, to the following:

(a) Name of drug, amount received, date of receipt, and drug expiration date;

(b) Name of drug and to who administered; date and amount of drug administered to client;

(c) Name of drug, date and place or means of disposal.

(4) Expired, deteriorated or unused legend drugs shall be disposed of in a manner that protects the licensee, client and others who may come into contact with the material during disposal.

Stat. Auth.: ORS 676.605, 676.615, 687.485, 687.493

Stats. Implemented: ORS 676.605, 676.615, 687.485, 687.493

Hist.: DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-025-0040

Approved Legend Drugs For Maternal Use

Licensed Direct Entry Midwives may administer the following legend drugs as approved by the Board for maternal use:

(1) Anti-Hemorrhagics for use by intramuscular injection includes:

(a) Synthetic Oxytocin (Pitocin, Syntocin and generic);

(b) Methylegonovine (Methergine);

(c) Ergonovine (Ergotrate); or

(2) Anti-Hemorrhagics by intravenous infusion is limited to Synthetic Oxytocin (Pitocin, Syntocin, and generic).

(3) Anti-Hemorrhagics for oral administration is limited to:

(a) Methylegonovine (Methergine);

(b) Misoprostol (Cytotec).

(4) Anti-Hemorrhagics for rectal administration is limited to Misoprostol (Cytotec).

(5) Resuscitation is limited to medical oxygen and I.V. fluid replacement.

(6) Intravenous fluid replacement includes:

(a) Lactated Ringers Solution;

(b) 0.9% Saline Solution;

(c) D5LR (5% Dextrose in Lactated Ringers); or

(d) D5W (5% Dextrose in water).

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(7) Anaphylactic treatment by subcutaneous injection is limited to Epinephrine.

(8) Local Anesthetic includes:

(a) Lidocaine HCl (1% and 2%) (Xylocaine and generic);

(b) Topical anesthetic;

(c) Procaine HCl (Novocain and and generic); and

(d) Sterile water papules.

(9) Rhesus Sensitivity Prophylaxis is limited to Rho(d) Immune Globulin (RhoGAM, Gamulin Rh, Bay Rho-D and others).

(10) Tissue adhesive (Dermabond or generic).

Stat. Auth.: ORS 676.605, 676.615, 687.485, 687.493

Stats. Implemented: ORS 676.605, 676.615, 687.485, 687.493

Hist.: DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-025-0050

Approved Legend Drugs For Neonatal Use

Licensed Direct Entry Midwives may administer the following legend drugs as approved by the Board for neonatal use:

(1) Eye Prophylaxis for disease of the newborn is limited to Erythromycin Ophthalmic (0.5%) Ointment (Ilotycin, AK-Mycin and generics).

(2) Prophylaxis for hemorrhagic disease of the newborn for oral use is limited to Mephyton.

(3) Prophylaxis for hemorrhagic disease of the newborn for intramuscular injection includes:

(a) AquaMephyton; and

(b) Konakion.

(4) Resuscitation is limited to medical oxygen.

Stat. Auth.: ORS 676.605, 676.615, 687.485, 687.493

Stats. Implemented: ORS 676.605, 676.615, 687.485, 687.493

Hist.: DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

332-030-0000

Investigative Authority

The Health Licensing Office may initiate and conduct investigations of matters relating to the practice of direct entry midwifery, pursuant to ORS 676.608, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and 687.445.

Stat. Auth.: ORS 676.608, 687.445

Stats. Implemented: ORS 676.608, 687.445

Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-2000(Temp), f. 7-14-00, cert. ef. 7-15-00 thru 12-1-00; DEM 4-2000, f. 9-29-00, cert. ef. 10-1-00; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04

Health Licensing Office, Sanitarians Registration Board Chapter 338

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Rules Repealed: 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, 338-030-0030, 338-030-0040, 338-030-0050, 338-030-0010

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

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

338-005-0020

Definitions

The following definitions apply to OAR 338-005-0020 through 338-020-0050.

(1) "Agency" means the Health Licensing Office. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(2) "Board" means, pursuant to ORS 700.210, the entity that advises the agency in matters relating to the practice of environmental sanitation and waste water sanitation, including establishing practice standards, education and training requirements, and advises the agency on all disciplinary issues in accordance with ORS 700.240. The agency director controls the regulatory operations and has decision-making authority on all substantive matters.

(3) "Candidate" means the applicant seeking registration as an environmental health specialist, environmental health specialist trainee, waste water specialist or waste water specialist trainee.

(4) "C.E.U." means a continuing education unit. The terms "continuing education credit" and "continuing education unit" are synonymous and may be used interchangeably.

(5) "College level" means those courses of instruction given at an accredited college or university with assigned credit toward the achievement of a baccalaureate degree.

(6) "Contact hours" means academic classroom or course work hours including but not limited to workshops, symposiums, seminars, or laboratory exercises. Contact time does not include personal travel time to or from the training site, registration or check-in periods, breaks or lunch time granted during attendance at any continuing education seminar or course.

(7) "Continuing education unit" means the numerical value determined by the Board to be earned by a renewal applicant by attending a specified Training course.

(8) "Direct personal supervision" means supervision without any intermediary or deputy.

(9) "Director" means the individual who is responsible for the performance of the agency as defined in ORS 676.610. The director appoints all subordinate officers and employees to carry out the duties of the agency.

(10) "Duties of an environmental health specialist" means activities which include, but are not limited to, the enforcement of regulations and statutes; planning and/or conducting surveys, investigations, and inspections; interpretation and utilization of data to promote environmental sanitation as it affects the health of the public or the quality of the environment.

(11) "Duties of an environmental health specialist trainee" means the utilization of the same skills, responsibilities and activities as the duties of an environmental health specialist; however, in a learning, training capacity and under the supervision of a registered or other qualified person as determined by the board.

(12) "Duties of a waste water specialist" means activities limited to those identified in ORS 700.056(1).

(13) "Duties of a waste water specialist trainee" means the utilization of the same skills, responsibilities and activities as the activities of a waste water specialist; however in a learning, training capacity and under the supervision of an environmental health specialist, waste water specialist or other qualified person as determined by the board.

(14) "Expired registration" means a registration that is not renewed prior to the expiration date (not to exceed three years). Persons with expired registrations may not legally work in the field of environmental sanitation or waste water sanitation.

(15) "Full-time employment or equivalent hours" means employment consisting of a 40 hour work week for a minimum of 96 consecutive weeks not to exceed two years; or, a period of employment with a cumulative total of 3,840 clock hours.

(16) "Health Licensing Office" means the agency.

(17) "Official transcript" means an original document certified by the school indicating hours and types of course work, examinations and scores that the student has completed, which has been submitted through mail by the school or by courier from the school to the Board office in a sealed envelope.

(18) "Other qualified person" means a person with qualifications and background in environmental sanitation equal to those of an environmental health specialist or a waste water specialist as determined by the board.

(19) "Reasonable notice" means notification in no less than 10 calendar days.

(20) "Reciprocity" means:

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(a) Registration in another state based on the equivalent standards of training and education required for Oregon registration as an environmental health specialist or waste water specialist according to the provisions of ORS 700.030 and 700.035; and

(b) A written examination successfully completed by the candidate which is equivalent to the written examination required in Oregon of candidates for registration by examination at time of application.

(21) "Related activities" means those activities which have a discernable connection to environmental sanitation.

(22) "Environmental health specialist" means an individual who has met the requirements of ORS 700.030 and has been issued a registration to practice environmental sanitation as defined in ORS 700.010(6).

(23) "Environmental health specialist trainee" means an individual who has met the requirements of ORS 700.035 and has been issued a registration to practice environmental sanitation under supervision in order to complete the required training, education and work experience under ORS 700.030 for registration as an environmental health specialist.

(24) "Science courses relating to environmental sanitation" means those courses of study which relate to environmental sanitation in the physical and natural sciences and includes special courses in sanitary science and public health.

(25) "Soil science courses" means, as used in ORS 700.053(3), at least 23 quarter hours or 15 semester hours, or combination thereof, of college courses in soil science, plus enough additional quarter or semester hours in other related college courses of study in the physical and natural sciences to equal a total of 45 quarter hours or 30 semester hours.

(26) "Supervision" means the direction and control exercised over one person by another in a traditional employee/employer relationship. Supervision includes ongoing oversight of work in the field and office, and review of reports, investigations or inspections conducted.

(27) "Timely renewal" means an application for registration renewal received on or before the expiration date.

(28) "Waste water specialist" means an individual, defined in ORS 700.010(11), who has met the requirements of ORS 700.053 and has been issued a registration to practice waste water sanitation within the scope of ORS 700.056.

(29) "Waste water specialist trainee" means an individual who has met the requirements of ORS 700.062 and has been issued a registration to practice waste water sanitation under supervision in order to complete the required training, education and work experience under ORS 700.053 for registration as a waste water specialist.

(30) "Waste water sanitation" means the art and science of applying sanitary, biological and physical science principles in the evaluation of soil for subsurface or surface disposal of waste water or for the land application of sludge; and determining the appropriate design of systems that use soil in the final stage of the waste water treatment processes.

(31) "Work experience" means performing the duties of an environmental health specialist while in trainee status under the supervision of a registered environmental health specialist or the equivalent in specific areas of environmental health. Work experience duties include:

(a) Exercising independent value judgment regarding environmental sanitation in an on site setting;

(b) Evaluating and approving permits and plans meeting environmental sanitation requirements;

(c) Issuing waivers and exceptions to existing regulations when warranted by circumstances;

(d) Providing information and guidance to individuals regarding plans, permits or other documents to ensure approval can be secured when all requirements are met;

(e) Performing on-location inspections for a determination of compliance.

Stat. Auth.: ORS 676.605, 676.615, 700.240

Stats. Implemented: ORS 676.605, 676.615, 700.240

Hist.: SRB 2, f. 4-7-72, ef. 5-1-72; SRB 1-1985, f. & ef. 11-1-85; SRB 1-1987, f. 6-10-87, ef. 6-15-87; SRB 2-1996, f. 5-31-96, cert. ef. 6-1-96; Renumbered from 338-010-0010 & 338-020-0020; SRB 1-1998, f. 4-29-98, cert. ef. 5-1-98; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

338-005-0030 Fees

(1) Applicants and registrants are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Health Licensing Office are as follows:

(a) Application fee: \$25;

(b) Examination — (written) environmental health specialist: \$175;

(c) Examination — (written) waste water specialist: \$150;

(d) Examination retake — environmental health specialist (each subsequent attempt): \$175;

(e) Examination retake — waste water specialist (each subsequent attempt for written section): \$150;

(f) Reciprocity fee: \$125;

(g) Initial registration: \$175;

(h) Annual registration renewal: \$175;

(i) Initial two-year trainee registration: \$175;

(j) Trainee extension of registration (up to 3,840 clock hours): \$50 per six month increment;

(k) Delinquency (late) fee: \$5 per month during the first year of expiration;

(l) Restoration of expired registration (payable up to three years of expiration): \$150;

(m) Duplicate registration: \$10;

Stat. Auth.: ORS 676.605, 700.080, 700.240

Stats. Implemented: ORS 676.605, 700.080, 700.240

Hist.: SRB 2, f. 4-7-72, ef. 5-1-72; SRB 4(Temp), f. & ef. 7-1-75 thru 10-28-75; SRB 5, f. 10-14-75, ef. 11-11-75; SRB 1-1981, f. & ef. 4-8-81; SRB 1-1984, f. & ef. 10-26-84; SRB 1-1985, f. & ef. 11-1-85; SRB 1-1993(Temp), f. & cert. ef. 10-22-92; SRB 1-1993, f. & cert. ef. 3-18-93; SRB 1-1996(Temp), f. 5-15-96, cert. ef. 6-1-96; SRB 3-1996, f. 6-28-96, cert. ef. 7-1-96; Renumbered from 338-010-0020; SRB 1-1997(Temp), f. & cert. ef. 7-23-97; SRB 1-1998, f. 4-29-98, cert. ef. 5-1-98; SRB 1-1999(Temp), f. 3-30-99, cert. ef. 4-1-99 thru 9-27-99; Administrative correction 11/17/99; SRB 1-2000, f. 1-28-00, cert. ef. 2-1-00; SRB 2-2000, f. 9-29-00, cert. ef. 10-1-00; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

338-010-0015

Application Requirements

(1) Individuals applying for registration to practice environmental sanitation or waste water sanitation must meet requirements of OAR 331-030-0000 and 331-030-0020, in addition to the requirements of this rule, that are applicable to the specific field of practice and qualification pathway for which registration is being sought.

(2) Applicants must submit a completed application form prescribed by the agency, which shall be accompanied by payment of the appropriate fees. The completed application shall contain the information listed in OAR 331-030-0000(5), and include the following:

(a) Signed and completed "Background Information Fact Sheet" which contains information on educational and work experience;

(b) Official transcripts from college, university and post graduate records;

(c) Evidence of prescribed educational and work experience as required by ORS 700.030, 700.053, and OAR 338-010-0025.

(3) Reciprocity: Applications for registration based on reciprocity as defined in ORS 700.052 and OAR 338-005-0020(20) must meet the requirements listed in subsections (1) and (2) of this rule. Documentation shall include a copy of the current registration and describe the type of examination completed for registration in another state or country.

(4) All documentation and payment of fees must be complete and received by the agency to be eligible and scheduled to take the examination.

Stat. Auth.: ORS 676.605, 700.030, 700.053, 700.240

Stats. Implemented: ORS 676.605, 700.030, 700.053, 700.240

Hist.: SRB 2, f. 4-7-72, ef. 5-1-72; SRB 4(Temp), f. & ef. 7-1-75 thru 10-28-75; SRB 5, f. 10-14-75, ef. 11-11-75; SRB 1-1985, f. & ef. 11-1-85; SRB 2-1996, f. 5-31-96, cert. ef. 6-1-96; SRB 1-1998, f. 4-29-98, cert. ef. 5-1-98; SRB 1-2004(Temp), f. 2-27-04, cert. ef. 3-1-04 thru 7-27-04; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

338-010-0017

Application for Registration as a Trainee

(1) Individuals applying for a "trainee" registration to practice environmental health or waste water sanitation must meet the requirements of OAR 331-030-0000, in addition to the requirements of subsection (2) of this rule.

(2) Applicants must submit a completed application form prescribed by the agency which shall be accompanied by payment of the application and registration fees. The completed application must contain the information listed in OAR 331-030-0000(5), and include evidence of prescribed education, such as official transcripts from college, university and post graduate records, and work experience as required in ORS 700.035, 700.062, or OAR 338-010-0025.

(3) Persons must hold a valid trainee registration to receive credit for work experience, while employed and performing duties of environmental sanitation or waste water sanitation as defined in OAR 338-005-0020(31).

Stat. Auth.: ORS 700.035, 700.062, 700.240

Stats. Implemented: ORS 700.035, 700.062, 700.240

Hist.: SRB 2-1996, f. 5-31-96, cert. ef. 6-1-96; SRB 1-1998, f. 4-29-98, cert. ef. 5-1-98; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

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338-010-0025

General Requirements for Registration; Requirements for Reciprocity

(1) Applicants for registration shall submit satisfactory evidence to the Board that they have completed the prescribed education and work experience requirements as listed in one of the following areas:

- (a) Environmental health specialist: ORS 700.030;
- (b) Waste water specialist: ORS 700.053;
- (c) Trainee — environmental health specialist: ORS 700.035; or
- (d) Trainee — waste water specialist: ORS 700.062.

(2) Applicants for registration by reciprocity shall provide evidence satisfactory to the Board that they have passed an examination equivalent to the examination required at the time of application for Oregon registration, and that they have the education and work experience equivalent to that required for an applicant for registration by examination in Oregon.

(3) Credits will be allowed toward work experience requirements for activities directly related to Environmental Sanitation and Waste Water Sanitation, and which were experienced in the military, industrial, special agency, or other situation, and shall be credited at the rate of one time unit of experience for each time unit of related work provided supervision occurred by a qualified person as determined by the Board.

Stat. Auth.: ORS 700.030, 700.035, 700.053, 700.062, 700.240
Stats. Implemented: ORS 700.030, 700.035, 700.053, 700.062, 700.240
Hist.: SRB 2, f. 4-7-72, ef. 5-1-72; SRB 1-1985, f. & ef. 11-1-85; SRB 2-1996, f. 5-31-96, cert. ef. 6-1-96; SRB 1-1998, f. 4-29-98, cert. ef. 5-1-98; SRB 1-2004(Temp), f. 2-27-04, cert. ef. 3-1-04 thru 7-27-04; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

338-010-0030

Examination

(1) Notwithstanding subsection (8) of this rule, the agency will administer an examination to qualified applicants. The agency reserves the right to alter or adjust examination dates, times and locations as it deems necessary to meet emergency situations and will notify applicants in advance.

(2) Applicants will qualify for examination upon compliance with all applicable provisions of OAR 338-010-0015, 338-010-0017 and 338-010-0025. Applicants will not be allowed to sit for the examination if documentation is incomplete or incorrect.

(3) Applicants must present photographic identification, such as a driver's license, and their original Social Security card to the examination proctor.

(4) In order to qualify for registration, an applicant must receive a passing score of at least 68 percent on the written examination.

(5) **EXAMINATION CONDUCT:** Examinations are conducted in a designated area with restricted access. Examination conduct differs between an environmental health specialist and a waste water specialist. Authorization for bringing any written material or electronic equipment or devices is subject to approval of the Board. Taking unauthorized items into the examination area may invalidate the examination and result in forfeiture of the examination and fees.

(6) **EXAMINATION DISQUALIFICATION:** An examination applicant will be immediately disqualified during or after the examination for conduct that interferes with the examination. Such conduct includes:

- (a) Giving or attempting to give assistance to others in answering questions during the examination;
- (b) Receiving or attempting to receive assistance during the examination, including assistance from other individuals, from notes, books or devices to answer questions;
- (c) Removing or attempting to remove any secure examination-related information, notes, or materials from the examination site;
- (d) Failing to follow directions relative to the conduct of the examination;
- (e) Exhibiting behavior which impedes the normal progress of the examination; and
- (f) Endangering the health or safety of a person involved in the examination.

(7) Disqualification will invalidate the examination and result in forfeiture of the examination and fees. The applicant will be required to reapply, submit additional examination fees, and request in writing to schedule another examination. Reexamination will be scheduled at a date, time and place determined by the Director following the date of disqualification.

(8) Satisfactory passage of the National Environmental Health Association examination, administered by an approved entity meeting NEHA requirements, will be recognized. The agency will accept verification directly from NEHA of a passing score as meeting Oregon examination requirements.

(9) Applicants will be responsible for any cost incurred from taking the examination at an alternative location other than an examination conducted at the Health Licensing Office.

Stat. Auth.: ORS 676.605, 700.050, 700.059, 700.240
Stats. Implemented: ORS 676.605, 700.050, 700.059, 700.240
Hist.: SRB 2, f. 4-7-72, ef. 5-1-72; SRB 1-1985, f. & ef. 11-1-85; SRB 1-1993, f. & cert. ef. 3-18-93; SRB 2-1996, f. 5-31-96, cert. ef. 6-1-96; SRB 1-1998, f. 4-29-98, cert. ef. 5-1-98; SRB 1-2003(Temp), f. & cert. ef. 4-25-03 thru 10-17-03; SRB 2-2003, f. 9-24-03, cert. ef. 10-1-03; SRB 1-2004(Temp), f. 2-27-04, cert. ef. 3-1-04 thru 7-27-04; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

338-010-0033

Examination Retake; Qualification

Applicants who fail the examination shall have an opportunity for examination retake in accordance with provisions of ORS 700.050(4) and 700.059(4); however, retake of the written examination shall be subject to an approved examination schedule set by the agency and completion of any required additional training as determined by the Board.

Stat. Auth.: ORS 700.050, 700.059, 700.240
Stats. Implemented: ORS 700.050, 700.059, 700.240
Hist.: SRB 2-1996, f. 5-31-96, cert. ef. 6-1-96; SRB 1-1998, f. 4-29-98, cert. ef. 5-1-98; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

338-010-0035

Registration Issuance; Exemption

(1) Pursuant to ORS 700.020, a person shall not practice environmental sanitation or waste water sanitation or claim to be an environmental health specialist or waste water specialist, including that a person shall not display a sign or in any way advertise or purport to be a registrant or to be engaged in the field of environmental sanitation or waste water sanitation, without first obtaining a registration under ORS Chapter 700.

(2) Registrants are subject to the provisions of OAR 331-030-0010 regarding issuance and renewal of a registration, and to the provisions of OAR 331-030-0020 regarding authorization to practice, identification, and the requirements for issuance of a duplicate authorization.

(3) Notwithstanding other exemptions listed in ORS 700.025(6), registration is not required for persons who provide recommendation or advice to clients, when advice is solely for the purpose of installation of an approved septic tank or cesspool system, and is not related to counseling or consulting in connection with the duties of waste water sanitation as defined in OAR 338-005-0020(30).

Stat. Auth.: ORS 676.605, 700.100, 700.240
Stats. Implemented: ORS 676.605, 700.100, 700.240
Hist.: SRB 2, f. 4-7-72, ef. 5-1-72; SRB 1-1985, f. & ef. 11-1-85; SRB 2-1996, f. 5-31-96, cert. ef. 6-1-96; SRB 1-1998, f. 4-29-98, cert. ef. 5-1-98; SRB 1-2004(Temp), f. 2-27-04, cert. ef. 3-1-04 thru 7-27-04; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

338-010-0038

Renewal

(1) Renewal applications received by the agency or postmarked after a registration has expired, but within one year from the expiration date, may be approved upon payment of the renewal fee and a delinquency fee for each calendar month or portion thereof in expired status up to one year (not to exceed 12 months).

(2) A registration that has been expired for more than one, but less than three years, may be renewed upon payment of the registration renewal fee and a restoration fee.

(3) All registered environmental health specialists and waste water specialists shall obtain 2.0 credits or 20 contact hours of continuing education training every two years as a condition of renewal, whether registration is current or expired.

(4) Submission of appropriate continuing education documentation required in OAR 338-020-0050(1) shall be accumulated and held by the registrant until such time as notified of audit by the agency according to provisions of OAR 338-020-0030(3) and 338-020-0050(1) and (2).

(5) A registrant who fails to renew within three years following the date of expiration, may be granted a registration upon reapplication, payment of registration and/or examination fee(s), and successful completion of examination according to OAR 338-010-0030(4).

Stat. Auth.: ORS 676.605, 676.615, 700.100, 700.240
Stats. Implemented: ORS 676.605, 676.615, 700.100, 700.240
Hist.: SRB 2-1996, f. 5-31-96, cert. ef. 6-1-96; SRB 1-1998, f. 4-29-98, cert. ef. 5-1-98; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

338-010-0050

Trainee Registration

(1) An environmental health specialist trainee or waste water specialist trainee registration will be issued to individuals when all qualifications have been met and payment of the registration fee is received. The registration will be valid for a period of two years, expiring on the last day of

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the month two years from the date of issuance. The original two-year trainee registration fee will not be prorated.

(2) The trainee registration will state the registrant's name, address, registration number, expiration date and bear the signature of the registrant.

(3) The trainee registration will not be extended beyond a two-year period unless the cumulative hours of work experience total less than 3,840 clock hours. In the event the trainee has acquired less than 3,840 clock hours, the registration may be extended for an additional period of time in increments of six months based on projected completion date of work experience. The extension fee will be prorated at \$50 per six-month period.

(4) The registrant must complete the Certificate form and obtain a supervisor's signature, attesting to the following information:

- (a) Trainee name;
- (b) Work location;
- (c) Date(s) work experience started and if applicable, ended;
- (d) Total hours of work experience recorded as of the date of certification;

(e) Disclosure as to whether the work experience is based on full time or part time employment;

(f) Activity performed and clock hours recorded for work experience per activity.

(5) Holding a trainee registration does not prevent a registrant from taking the board prescribed examination for registration as an environmental health specialist or waste water specialist before completion of the required work experience. The trainee must satisfactorily complete prescribed work experience and the written examination within the two-year registration period or within a 3,840 total clock hour limitation.

(6) All registered trainees shall obtain 1.0 credits or 10 contact hours of continuing education training every year as a condition of holding the registration.

(7) Persons who previously held a trainee registration, which expired without attainment of permanent registration or fulfillment of the two year or 3,840 clock hour limitation, may be issued an extension to their trainee registration subject to the following conditions:

(a) Submission of the Certification of Work Experience form documenting previous hours of work experience attained while in trainee status;

(b) Submission of satisfactory evidence that the trainee is or will be working in the field of environmental sanitation and will be under the direct supervision of an Oregon registered environmental health specialist or other person possessing equivalent credentials approved by the Board;

(c) Submission of continuing education required in subsection (6) of this rule and in accordance with provisions of OAR 338-020-0030. Documentation must meet the requirements of OAR 338-020-0050(3).

(8) The trainee registration issued will be valid only for the remaining period of time from those hours previously accumulated for a maximum cumulative total of two years or 3,840 clock hours.

(9) Trainees who fail to meet requirements of subsection (7)(a) through (c) will not be eligible for a registration extension until all qualifications have been met.

(10) An individual who holds a trainee registration that has been expired for more than three years, and who has not yet completed the 3,840 required hours of training, will be required to reapply and meet all registration requirements in accordance with ORS 700.100(4). Trainee registrations that are extended under this rule will only be valid for the time remaining to complete an aggregate 3,840 hours of training or six months, whichever occurs first.

Stat. Auth.: ORS 676.605, 700.035, 700.062, 700.240
Stats. Implemented: ORS 676.605, 700.035, 700.062, 700.240
Hist.: SRB 1-1998, f. 4-29-98, cert. ef. 5-1-98; SRB 1-2004(Temp), f. 2-27-04, cert. ef. 3-1-04 thru 7-27-04; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

338-020-0000

Continued Competency

(1) To ensure continuing efforts on the part of Oregon environmental health specialists, waste water specialists, and trainees to remain current with new developments in environmental sanitation and waste water sanitation and to encourage diversified training and qualifications in the profession continuing education is required as a condition of registration.

(2) Continuing education requirements apply whether the renewal applicant is living or working within Oregon or outside of the state so long as Oregon registration is maintained.

Stat. Auth.: ORS 700.105
Stats. Implemented: ORS 700.105
Hist.: SRB 1-1987, f. 6-10-87, ef. 6-15-87; SRB 2-1996, f. 5-31-96, cert. ef. 6-1-96; Renumbered from 338-020-0010; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

338-020-0030

Continuing Education Requirements

(1) To maintain registration, environmental health specialists and waste water specialists must complete 2.0 credits or 20 contact hours every two years. Hours in excess of those required for the two-year reporting period shall not be carried forward and applied toward the succeeding two-year CEU renewal requirements.

(2) Each registrant shall report compliance with the continuing education requirement through attestation on the registration renewal document. Registrants are subject to provisions of OAR 338-020-0050 pertaining to periodic audit of continuing education.

(3) Continuing education shall be approved for participation or attendance at an approved instructional program presented, recognized, or under the auspices of any institution, agency, professional organization or association, which conducts educational meetings, workshops, symposiums, seminars and other such activities where CEU credit is offered.

(4) Continuing education shall address subject matter related to Environmental Sanitation in accordance with ORS 700.010(6) and (9) and OAR 338-005-0020(10) and (24), or Waste Water Sanitation in accordance with ORS 700.010(11), 700.056 and OAR 338-005-0020(25) and (30).

(5) CEU credit will be awarded for contact hours per unit and will be based on the following criteria:

(a) Completion of established courses taken from a recognized college or university at the same rate of credit established by that institution;

(b) Professional courses which meet academic requirements in content, instruction and evaluation will be assigned CEU credit at the same rate as academic courses.

(c) Courses that do not meet standards as set forth in paragraphs (a) and (b) of this subsection, such as workshops, symposiums, seminars, laboratory exercises, or any applied experience with or without formal classroom work may receive credit at the rate of 1 CEU for each ten contact hours of attendance.

(6) To ensure adequate proof of continuing education course completion is available for audit or investigation by the Health Licensing Office, practitioners shall maintain a record of attendance for two years following renewal.

Stat. Auth.: ORS 676.605, 700.105, 700.240
Stats. Implemented: ORS 676.605, 700.105, 700.240
Hist.: SRB 1-1987, f. 6-10-87, ef. 6-15-87; SRB 2-1996, f. 5-31-96, cert. ef. 6-1-96; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

338-020-0050

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Health Licensing Office will audit a select percentage of registrations determined by the Board to verify compliance with continuing education requirements.

(2) Registrants notified of selection for audit of continuing education attestation shall submit to the agency within 30 calendar days from the date of issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 338-020-0030.

(3) Documentation of attendance at a program or course provided by the sponsor must include:

- (a) Name of sponsoring institution/association or organization;
- (b) Title of presentation and description of content;
- (c) Name of instructor or presenter;
- (d) Date of attendance, duration in hours, or CEU credit;
- (e) Course agenda;
- (f) Official transcript, diploma, certificate, statement or affidavit from the sponsor, attesting to attendance.

(4) If documentation of continuing education is invalid or incomplete, the registrant must correct the deficiency within 30 calendar days from the date of notice. Failure to correct the deficiency within the prescribed time shall constitute grounds for disciplinary action.

(5) Misrepresentation of continuing education, or failing to meet continuing education requirements or documentation may result in disciplinary action, which may include but is not limited to assessment of a civil penalty and suspension or revocation of the registration.

Stat. Auth.: ORS 676.605, 700.105, 700.240
Stats. Implemented: ORS 676.605, 700.105, 700.240
Hist.: SRB 1-1987, f. 6-10-87, ef. 6-15-87; SRB 2-1996, f. 5-31-96, cert. ef. 6-1-96; Renumbered from 338-020-0110; SRB 1-1998, f. 4-29-98, cert. ef. 5-1-98; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

338-030-0020

Investigative Authority

The Health Licensing Office may initiate and conduct investigations of matters relating to the practice of environmental health, pursuant to ORS

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676.608, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and 700.111.

Stat. Auth.: ORS 676.605, 676.615, 700.111, 700.240

Stats. Implemented: ORS 676.605, 676.615, 700.111, 700.240

Hist.: SRB 2-1996, f. 5-31-96, cert. ef. 6-1-96; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04

Land Conservation and Development Department Chapter 660

Adm. Order No.: LCDD 5-2004

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Rules Amended: 660-023-0180

Subject: The adopted amendments 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. For those significant aggregate sites, the rule provides 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. The rule includes provisions to protect certain types of higher quality agricultural land that may be affected by sites approved under the new CUP process.

Rules Coordinator: Shelia Preston—(503) 373-0050, ext. 222

660-023-0180

Mineral and Aggregate Resources

(1) For purposes of this rule, the following definitions apply:

(a) “Aggregate resources” are naturally occurring concentrations of stone, rock, sand gravel, decomposed granite, limestone, pumice, cinders, and other naturally occurring solid materials commonly used in road building or other construction.

(b) “Conflicting use” is a use or activity that is subject to land use regulations and that would interfere with, or be adversely affected by, mining or processing activities at a significant mineral or aggregate resource site (as specified in subsection (5)(b) and section (7) of this rule).

(c) “Existing site” is an aggregate site that meets the requirements of subsection (3)(a) of this rule and was lawfully operating, or was included on an inventory of significant aggregate sites in an acknowledged plan, on September 1, 1996.

(d) “Expansion area” is an aggregate mining area contiguous to an existing site.

(e) “Farmland” means land planned and zoned for exclusive farm use pursuant to Goal 3 and OAR chapter 660, division 033.

(f) “Mineral resources” are those materials and substances described in ORS 517.750(7) but excluding materials and substances described as “aggregate resources” under subsection (a) of this section.

(g) “Minimize a conflict” means to reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by local, state, or federal standards (such as the Department of Environmental Quality standards for noise and dust levels), to “minimize a conflict” means to ensure conformance to the applicable standard.

(h) “Mining” is the extraction and processing of mineral or aggregate resources, as defined in ORS 215.298(3) for farmland, and in ORS 517.750 for land other than farmland.

(i) “Mining area” is the area of a site within which mining is permitted or proposed, excluding undisturbed buffer areas or areas on a parcel where mining is not authorized.

(j) “Processing” means the activities described in ORS 517.750(10).

(k) “Protect” means to adopt land use regulations for a significant mineral or aggregate site in order to authorize mining of the site. For purposes of subsection (2)(d) of this rule, “protect” also means to limit or prohibit new conflicting uses within the impact area of the site.

(l) “Thickness of the aggregate layer” means the depth of the waterlain deposit of sand, stones, and pebbles of sand-sized fraction or larger, minus the depth of the topsoil and nonaggregate overburden.

(m) “Willamette Valley” means Clackamas, Columbia, Linn, Marion, Multnomah, Polk, Washington, and Yamhill counties and the portions of Lane and Benton Counties east of the summit of the Coast Range.

(2) Local governments are not required to amend acknowledged inventories or plans with regard to mineral and aggregate resources except in response to an application for a post acknowledgement plan amendment

(PAPA) or at periodic review as specified in section (9) of this rule. The requirements of this rule modify, supplement, or supersede the requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050, as follows:

(a) A local government may inventory mineral and aggregate resources throughout its jurisdiction, or in a portion of its jurisdiction. When a local government conducts an inventory of mineral and aggregate sites in all or a portion of its jurisdiction, it shall follow the requirements of OAR 660-023-0030 except as modified by subsection (b) of this section with respect to aggregate sites. When a local government is following the inventory process for a mineral or aggregate resource site under a PAPA, it shall follow the applicable requirements of OAR 660-023-0030, except where those requirements are expanded or superceded for aggregate resources as provided in subsections (b) through (d) of this section and sections (3), (4) and (8) of this rule;

(b) Local governments shall apply the criteria in section (3) or (4) of this rule, whichever is applicable, rather than OAR 660-023-0030(4), in determining whether an aggregate resource site is significant;

(c) Local governments shall follow the requirements of section (5) or (6) of this rule, whichever is applicable, in deciding whether to authorize the mining of a significant aggregate resource site, and OAR 660-023-0040 through 660-023-0050 in deciding whether to authorize mining of a significant mineral resource; and

(d) For significant mineral and aggregate sites where mining is allowed, except for aggregate sites that have been determined to be significant under section (4) of this rule, local governments shall decide on a program to protect the site from new off-site conflicting uses by following the standard ESEE process in OAR 660-023-0040 and 660-023-0050 with regard to such uses.

(3) An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:

(a) A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley;

(b) The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or

(c) The aggregate site was on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.

(d) Notwithstanding subsections (a) and (b) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:

(A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on June 11, 2004; or

(B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil, on NRCS maps available on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds:

(i) 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;

(ii) 25 feet in Polk, Yamhill, and Clackamas counties; or

(iii) 17 feet in Linn and Benton counties.

(4) Notwithstanding section (3) of this rule, a local government may also determine that an aggregate resource site on farmland is significant if subsections (a) and (b) of this section apply or if subsection (c) of this section applies:

(a) The quantity of material proposed to be mined from the site is estimated to be 2,000,000 tons of aggregate material or less for a site in the Willamette Valley, or 500,000 tons or less for a site outside the Willamette Valley; and

(b) Not more than 35 percent of the proposed mining area consists of soil

(A) Classified as Class I on Natural Resource and Conservation Service (NRCS) maps available on June 11, 2004; or

(B) Classified as Class II, or of a combination of Class II and Class I or Unique soil, on NRCS maps on June 11, 2004, unless the average thick-

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ness of the aggregate layer within the mining area exceeds the amounts specified in paragraph (B) of subsection (3)(d) of this rule; or

(c) A local land use permit that allows mining on the site was issued prior to April 3, 2003, and the permit is in effect at the time of the significance determination.

(5) For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section. A local government must complete the process within 180 days after receipt of a complete application that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.

(a) The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.

(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:

(A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;

(B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;

(C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified under OAR Chapter 660, Division 013;

(D) Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;

(E) Conflicts with agricultural practices; and

(F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780;

(c) The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.

(d) The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local government shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. Local governments shall reach this decision by weighing these ESEE consequences, with consideration of the following:

(A) The degree of adverse effect on existing land uses within the impact area;

(B) Reasonable and practicable measures that could be taken to reduce the identified adverse effects; and

(C) The probable duration of the mining operation and the proposed post-mining use of the site.

(e) Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e.g., site plan review), if required by the local government, shall not exceed the minimum review necessary to assure compliance with these requirements and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining or processing activities:

(A) For which the PAPA application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;

(B) Not requested in the PAPA application; or

(C) For which a significant change to the type, location, or duration of the activity shown on the PAPA application is proposed by the operator.

(f) Where mining is allowed, the local government shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed under ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780.

(g) Local governments shall allow a currently approved aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.

(6) For an aggregate site on farmland that is determined to be significant under section (4) of this rule, the requirements of section (5) of this rule are not applicable, except for subsection (5)(f), and the requirements of OAR 660-023-0040 though 660-023-0050 are not applicable. Instead, local governments shall decide whether mining is permitted by applying subsections (a) through (d) of this section:

(a) The proposed aggregate mine shall satisfy discretionary conditional use permit approval standards adopted by the local government pursuant to applicable requirements of ORS 215.213(2) or 215.283(2), and the requirements of ORS 215.296 and 215.402 through 215.416;

(b) The local government shall determine the post-mining use in accordance with subsection (5)(f) of this rule;

(c) The local government shall issue a permit for mining aggregate only for a site included on an inventory of significant aggregate sites in the comprehensive plan in accordance with ORS 215.298(2); and

(d) The conditional use permit shall not allow mining of more than the maximum amount of aggregate material specified under subsection (4)(a) of this rule.

(7) Except for aggregate resource sites determined to be significant under section (4) of this rule, local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site. (This requirement does not apply if, under section (5) of this rule, the local government decides that mining will not be authorized at the site.)

(8) In order to determine whether information in a PAPA submittal concerning an aggregate site is adequate, local government shall follow the requirements of this section rather than OAR 660-023-0030(3). An application for approval of an aggregate site following sections (4) and (6) of this rule shall be adequate if it provides sufficient information to determine whether the requirements in those sections are satisfied. An application for a PAPA concerning a significant aggregate site following sections (3) and (5) of this rule shall be adequate if it includes:

(a) Information regarding quantity, quality, and location sufficient to determine whether the standards and conditions in section (3) of this rule are satisfied;

(b) A conceptual site reclamation plan;

(NOTE: Final approval of reclamation plans resides with DOGAMI rather than local governments, except as provided in ORS 517.780)

(c) A traffic impact assessment within one mile of the entrance to the mining area pursuant to section (5)(b)(B) of this rule;

(d) Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500 foot impact area; and

(e) A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses.

(9) Local governments shall amend the comprehensive plan and land use regulations to include procedures and requirements consistent with this

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rule for the consideration of PAPAs concerning aggregate resources. Until such local regulations are adopted, the procedures and requirements of this rule shall be directly applied to local government consideration of a PAPA concerning mining authorization, unless the local plan contains specific criteria regarding the consideration of a PAPA proposing to add a site to the list of significant aggregate sites, provided:

(a) Such regulations were acknowledged subsequent to 1989; and

(b) Such regulations shall be amended to conform to the requirements of this rule at the next scheduled periodic review after September 1, 1996, except as provided under OAR 660-023-0250(7).

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.040 & 197.225- 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96; LCDD 5-2004, f. & cert. ef. 6-25-04

Lane County Local Government Boundary Commission Chapter 191

Adm. Order No.: LCBC 1-2004

Filed with Sec. of State: 6-30-2004

Certified to be Effective: 8-1-04

Notice Publication Date: 6-1-04

Rules Amended: 191-010-0000

Subject: Amendment of filing fee rule.

Rules Coordinator: Paula L. Taylor—(541) 682-4425

191-010-0000

Filing Fee Rule/Schedule

(1) Pursuant to Chapter 12, Oregon Laws 1980, the Lane County Local Government Boundary Commission hereby establishes the following charges for services necessary to defray the costs of operating the Commission and to carry out the purposes of ORS 199.410 to 199.512.

(2) No proposal for a boundary change, as defined in ORS 199.415, and no water or wastewater line extension proposal or any other action set forth in ORS 199.464 requiring Boundary Commission consideration and approval shall be considered filed with the Commission unless accompanied by a filing fee in the amount indicated in section (8) of this rule.

(3) It shall be the responsibility of the chief petitioner to transmit the filing fee to the Commission at the time the petition is filed with the Commission. As used in this rule, "chief petitioner" means the person or unit of government filing the petition with the Boundary Commission in the case of minor boundary changes and actions provided by ORS 199.464 and, in the case of major boundary changes, the person or unit of government filing the petition with the filing agency according to the principal act, provided that a city council or district board shall be the chief petitioner for boundary change proposals initiated pursuant to ORS 199.490(2) and (5) and water and wastewater line extensions and connections as set forth in ORS 199.464(3). The chief petitioner may collect the filing fee from property owners and/or voters in the territory described in the petition.

(4) The Commission shall use the County Assessor's records to determine the acreage of the proposal for the purpose of computing the filing fee. For the purpose of determining the acreage for the filing fee, land within a public way or ownership shall not be included in the acreage computation unless the proposal, as initiated, includes only territory within a public way or ownership. In such case, the filing fee shall be the minimum fee in section (8) of this rule under the applicable section.

(5) As used in this rule, "urban growth boundary" means the boundary that a city and county have adopted or proposed as part of the comprehensive land use plan to meet the requirements of statewide planning Goal 14.

(6) Annexations initiated in accordance with ORS 222.750 and 199.490(5), "islands," shall be subject to the minimum fee for city annexations in section (8) of this rule.

(7) Effective July 1, 1991, dissolution of inactive districts initiated pursuant to ORS 198.335 to 198.365 shall require the applicable fee consistent with section (8) of this rule. Reimbursement of all or any portion of the required filing fee will be made on a case-by-case basis and shall require a majority vote of a quorum of the Commission. In determining the amount of possible reimbursement, the Commission shall consider the remaining debts and assets of the district, the actual processing costs to the Commission, and the Commission's financial situation.

(8) Type of Action/Unit or Jurisdiction

(a)(A) Minor boundary changes (annexations/withdrawals/transfers) for the following, except when the entirety of a city or district is the affected territory: (* exist in Lane County)

(i) Park and recreation district*;

(ii) Metropolitan service district;

(iii) Highway lighting;

(iv) County service district* (except wastewater/water);

(v) Vector control district;

(vi) Rural fire protection district*;

(vii) Geothermal heating district.

(B) Fees:

(i) Up to 25 acres \$345;

(ii) 26 to 50 acres \$485;

(iii) 51 to 150 acres \$630;

(iv) 151 to 640 acres \$760;

(v) Over 640 acres \$880.

(b) Minor boundary changes (annexations/withdrawals/transfers) for governments not listed in #1 above except when a minor boundary change for a government listed in #1 includes the entirety of a city or district as the affected territory:

(A) Consisting of less than 1 acre \$815;

(B) Consisting of 1 acre or more but less than 5 acres \$1,045;

(C) Consisting of 5 acres or more but less than 10 acres \$1,335

(D) Consisting of 10 acres or more but less than 25 acres \$1,680;

(E) Consisting of 25 acres or more but less than 50 acres. \$2,095;

(F) Consisting of 50 acres or more but less than 100 acres \$2,400;

(G) Consisting of 100 acres or more \$3,300.

(c) Major boundary changes (formations, dissolutions, mergers* and consolidations*):

(A) Cities:

(i) Under 2,500 population \$3,500;

(ii) 2,500 to 10,000 population \$4,900;

(iii) 10,001 to 20,000 population \$7,000;

(iv) Over 20,000 population \$9,690.

(B) Districts:

(i) Under \$10 million assessed valuation \$3,500;

(ii) \$10,000,000 to 100,000,000 assessed valuation \$4,900;

(iii) \$100,000,001 to 250,000,000 assessed valuation \$7,000;

(iv) Over \$250,000,000 assessed valuation \$9,690.

NOTE: *For mergers and consolidations, the highest fee is used based on the highest assessed value or population of the affected city and/or district.

(d) Extraterritorial wastewater or water line extensions (public and private) \$815.

(e) Formation of privately owned wastewater and water systems. \$1,035.

(f) Initial allocation of territory to privately owned water system \$1,440;

(A) Allocation of additional territory to privately owned water systems (up to 10 acres) \$755;

(B) Allocation of additional territory to privately owned water systems (more than 10 acres) \$1,025.

(g) "Contractual Annexations":

(A) Review of proposed contract between city and applicant by boundary commission (public hearing) \$815;

(B) Hearing on creation of "ring" (island)/extraterritorial service extensions by boundary commission:

(i) Based on total area (ring + island) see section (8) of this rule \$815-\$3,300;

(ii) For each service extension \$815;

(C) Hearing on final annexation of territory \$815.

NOTE: Annexations to Lane County Metropolitan Wastewater Service District concurrent with Eugene or Springfield annexations are automatic — no fee. Annexations to Willamalane Park and Recreation District concurrent with Springfield annexations are automatic — no fee.

NOTE: An annexation with a delayed effective date may be considered a single filing with one application and filing fee (consistent with #8(b) above) — without separate water and wastewater extension requests — when the annexing area is contiguous to existing city limits and water and wastewater lines to serve the annexing area lie wholly within the city limits and the area to be annexed.

Stat. Auth.: ORS 199.452, 199.457 & 199.458

Stats. Implemented: ORS 199.457

Hist.: LCBC 2-1980(Temp), f. & ef. 10-31-80; LCBC 1-1981 (Temp), f. & ef. 1-13-81; LCBC 2-1981, f. & ef. 4-6-81; LCBC 3-1981, f. 10-7-81, ef. 11-1-81; LCBC 2-1984, f. 4-9-84, ef. 5-4-84; LCBC 3-1989, f. 6-16-89, cert. ef. 7-1-89; LCBC 2-1990, f. 3-8-90, cert. ef. 7-1-90; LCBC 1-1992, f. 4-16-92, cert. ef. 7-1-92; LCBC 2-1993, f. 4-16-93, cert. ef. 7-1-93; LCBC 1-1994, f. 3-28-94, cert. ef. 7-1-94; LCBC 1-1995, f. & cert. ef. 5-12-95; LCBC 1-1996, f. & cert. ef. 4-19-96; LCBC 1-1997, f. & cert. ef. 5-8-97; LCBC 1-1998, f. & cert. ef. 4-27-98; LCBC 1-1999, f. & cert. ef. 6-18-99; LCBC 1-2000, f. & cert. ef. 5-17-00; LCBC 1-2001, f. 6-12-01, cert. ef. 6-29-01; LCBC 1-2002, f. 9-3-02, cert. ef. 9-9-02; LCBC 1-2003, f. 7-7-03, cert. ef. 8-1-03; LCBC 1-2004, 6-30-04, cert. ef. 8-1-04

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Office of Energy Chapter 330

Adm. Order No.: DOE 3-2004

Filed with Sec. of State: 7-1-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 5-1-04

Rules Amended: 330-090-0105, 330-090-0110, 330-090-0120, 330-090-0130, 330-090-0135, 330-090-0140, 330-090-0150

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

Other housekeeping: Substitutes "Director" for "Administrator" throughout text and renumbers as needed. Eliminates duplicate text for eligible transportation projects.

Rules Coordinator: Kathy Stuttaford—(503) 378-4128

330-090-0105

What a BETC Is

A Business Energy Tax Credit may be received against owed Oregon income taxes for up to 35 percent of the cost of qualifying energy or conservation projects. An Oregon business or non-profit entity qualifying for the tax credit may transfer the credit through the Pass-through Option in return for a cash payment. The Oregon Department of Energy (ODOE) must approve the credit before it can be claimed. The credit is an incentive for Oregonians to invest in qualifying energy or conservation projects. Oregon Administrative Rules chapter 330, division 90 applies to all Business Energy Tax Credit applications received by ODOE on or after January 1, 2004.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04

330-090-0110

Definitions

(1) "Alternative Fuel": A motor vehicle fuel, other than gasoline or diesel, that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, ethanol, biodiesel, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), and other fuels the Director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(2) "Alternative Fuel Fueling Station": A fueling facility necessary to refuel alternative fuel vehicle fleets. This will include the facilities for mixing, storing, compressing, charging, and dispensing alternative fuels, and any other necessary and reasonable equipment. It can be a facility for either public or private use.

(3) "Alternative Fuel Vehicle (AFV)": A vehicle designed to operate on an alternative fuel. This includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. This does not include vehicles owned or leased by the State of Oregon. This does not include vehicles leased by an investor-owned utility (IOU) to others.

(4) "Applicant": A person who applies for a business energy tax credit under this section.

(a) It includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies that file an Oregon income tax return.

(b) It includes any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a pass-through partner that files an Oregon income tax return, or commit to select such a partner prior to final certification.

(c) It includes a contractor installing an alternative fueled vehicle fueling station in a dwelling.

(d) It does not include any business or non-profit corporation or cooperative that restricts membership, sales, or services on the basis of race, color, creed, religion, national origin, sexual preference, or gender.

(5) "Building Code": Applicable state and local building codes in effect the date ODOE receives the application for preliminary certification.

(6) "Business Energy Tax Credits Technical Requirements (BETC Technical Requirements)": A manual produced by and available from ODOE describing specific technical requirements that must be met to comply with these rules, based on the version of the manual in effect the date the application for preliminary certification is received by ODOE.

(7) "Car Sharing Program" means a program in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.

(8) "Commercial New Construction": A new structure or one of the following:

(a) An addition to an existing structure, which provides additional square footage;

(b) An alteration to an existing structure, which changes the functional use of the entire structure;

(c) An alteration to an existing structure occurring within six months of a change in the facility's ownership; or

(d) A major renovation to 50 percent or more of the square footage of an existing structure in which three or more building systems are changed. Systems include but are not limited to: envelope, space conditioning, lighting, water heating and process.

(9) "Commissioning": The process to assure that Heating Ventilating and Air Conditioning (HVAC) systems (and associated hydronic systems), lighting system controls and automatic temperature control systems have been completely and properly installed and put into service in accordance with their design intent as defined by the contract documents. The process of commissioning also includes the systematic testing, verification, documentation, training of operations personnel and preparation of operations and maintenance documentation.

(10) "Commercial Process": An energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.

(11) "Commuter Parking Space" means a parking space that is:

(a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.

(b) Leased by the employer for an employee's use:

(A) Separate from the lease for the business premises.

(B) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.

(c) Owned by the employer.

(d) Not located in a lot used primarily for business customers.

(e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee's job duties.

(12) "Completed Application": Contains all of the information detailed in OAR 330-090-0130(4). All questions on the application form must be answered. An incomplete application will be returned to the applicant for completion. Only completed applications will be considered on a first-come-first-served basis.

(13) "Completed Project": An energy or conservation project for which all costs have been paid or committed by a binding contract or agreement and that is installed and operating or which the Director decides the applicant has made all reasonable efforts to operate, including making changes suggested by ODOE.

(14) "Cooperative Agreement Organization": ODOE may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the development and qualification of BETC applications, with the scope of the agreement defined by ODOE based on the qualifications of the organization and subject to conditions specified in the agreement.

(15) "Cost": The capital costs and expenses the Director finds are needed to acquire, erect, build, or install an energy or conservation project under these rules. Cost for necessary features are not eligible. Costs financed with federal funds, other than costs financed by grants or tax credits excluded by ORS 315.356(1), may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses. Costs incurred by entities that are not taxpayers, including but not limited to, cooperatives, non-profit corporations, state or local governments including school districts, water districts, or any other special districts, may be eligible costs irrespective of their funding sources.

(a) Cost can include payments for:

(A) Fees to finance, design or engineer the project;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150(2), and shipping;

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(C) All materials and supplies needed for the project; and
(D) Work performed by employees of the applicant based on the following conditions:

(i) Employees must be certified, accredited, licensed, or otherwise qualified to do the work; and

(ii) Costs for employee's work must be detailed and documented as to specific tasks, hours worked, and compensation costs.

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a project; or

(E) Other costs the Director excludes.

(c) If an energy or conservation project is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the project is the value paid for the project. If that amount is not known, the cost is the sum of:

(A) Tax credits passed through by the lessor to the lessee;

(B) The amount paid when the project is transferred; and

(C) The lease payments not including taxes, insurance, interest, and operating costs.

(D) Payments to be made in the future must be discounted to present value.

(d) If an energy or conservation project serves more than one purpose, cost includes only items needed to save energy and/or use renewable energy resources. This includes new or replacement equipment that costs more because of its energy saving features. ODOE may do inspections to verify eligible costs.

(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar project without energy efficient features.

(A) In commercial new construction, it is the difference between building to code and building to meet or exceed the standards for substantial energy savings.

(B) In other projects, it is the difference between prevailing practices for that business or industry and a more energy efficient method.

(f) Excluding Research, Development & Demonstration, Sustainable Building Projects, recycling market development, and transportation projects, eligible project costs are limited by the following:

(A) All other projects must have fifteen-year simple payback period, except rental dwelling weatherization projects and solar photovoltaic projects that are limited to a 30-year simple payback. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and

(B) All other projects must have a simple payback of more than one year and less than the service life of the project.

(g) Costs for a Research, Development & Demonstration project also include costs of instruments, controls, and other equipment needed to monitor or audit the project. This equipment does not need to save or produce energy.

(h) Costs for space conditioning or individual metering energy or conservation project(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be the total eligible project costs. Incremental costs are limited to 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (i) below.

(i) Costs for space and water heating equipment as defined in OAR 330-090-0110(18)(d) include the total cost of individually metered systems that replace a central system in a rental dwelling.

(j) Eligible costs for Transportation Projects include, but are not limited to, telecommuting, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, and parking cash out.

(k) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. When incremental cost values are not available the incremental cost will be deemed to be 40 percent of the purchase cost.

(l) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:

(A) The utility must submit exact specifications of the limit to and receive approval by ODOE prior to implementation of the limit.

(B) The utility must provide notification to the customer that there is no minimum when applying directly to ODOE, however, payments in OAR 330-090-0150(2) do apply.

(m) Sustainable Building Projects are exempt from the previous requirements of this definition, as the eligible cost for these projects is calculated using the schedule in OAR 330-090-0135.

(n) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization and the business energy tax credit may not exceed eligible costs.

(16) "Energy Department": The Department of Energy of the State of Oregon (ODOE).

(17) "Energy or Conservation Project": A renewable resource, recycling, recycling market development, conservation, transportation, alternative fuel vehicle, alternative fuel fueling station, a sustainable building project, or Research, Development & Demonstration project that complies with these rules and any applicable BETC Technical Requirements. It must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such project, except as allowed for a Research Development & Demonstration project, transportation or recycling market development or recycling project.

(a) An energy conservation measure (ECM), is an energy or conservation project if it results in substantial savings in the amount of purchased energy used at a site by a business or other eligible entity. Energy conservation measures include equipment installed for the purpose of reducing energy use.

(b) Each unit or group of units of an energy or conservation project is an energy project by itself if:

(A) Each unit or group of units can save or produce a substantial amount of energy by itself; and

(B) The application and all licenses and permits for the project show it will consist of smaller units or groups of units; and

(C) The entire project complies with these rules; and

(D) It is connected to a load or end use or it displaces a connected load.

(c) Costs for an energy project needed to obtain substantial energy savings for a new commercial, institutional, or industrial building. Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.

(d) A space conditioning system(s) is an energy project if it provides substantial energy savings and complies with the BETC Technical Requirements, including reporting whether any replaced mercury-switch thermostats will be or have been recycled and, if so, how. Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in OAR 330-090-0110(16)(e), of a fuel switching project will be allowed if the upgrade complies with these rules.

(e) A new electric motor that complies with the BETC Technical Requirements.

(f) For buildings to be owned, leased, or otherwise operated and maintained by the state, including the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR chapter 330, division 130 and associated guidelines, in addition to meeting requirements of these rules.

(g) Except as noted in (18)(d), an energy project does not include:

(A) Swimming pools and hot tubs used to store heat.

(B) Wood stoves.

(C) Conventional space conditioning systems and back-up heating systems, including but not limited to:

(i) Air to air heat pumps for a new use or to replace an existing heating system. A waste heat recovery project that uses air-to-air heat pumps is an energy project.

(ii) Gas or oil-fired boilers, except that part of a boiler that improves its energy efficiency. Permitted improvements include oxygen trim controls, heat recovery devices, turbulators, and other devices approved by ODOE. Also permitted are small boilers or water heaters that allow a larger heating plant to shut down part of the year.

(D) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(E) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.

(F) Devices or materials which are standard practice.

(G) Recycling automotive air conditioning chlorofluorocarbons (CFC).

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(H) Conservation in rental dwellings, for applicants listed in ORS 469.205(1)(c)(A) and (B), which were issued an occupancy permit on or after January 1, 1996.

(I) Other items the Director finds are not allowed under ORS 469.185 to 469.225, 317.104, and 316.140 to 316.142.

(18) "Director": The Director of the Oregon Department of Energy or designees.

(19) "Final Certification": Final certificate issued upon completion of an approved BETC project.

(20) "Geothermal Energy": Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:

(a) Products of geothermal processes, such as steam, hot water, and hot brines.

(b) Steam and gases, hot water and brine caused by injecting substances into the earth.

(c) Heat or other related energy in the earth.

(d) By-products of (a) through (c).

(21) "Industrial Process Energy Project": Energy project that provides a direct improvement to a manufacturing process in a facility conducting activities categorized in two-digit 1987 Standard Industrial Classification (SIC) codes 01 through 49 or the corollary 2002 North American Industry Classification System (NAICS) codes including 11 through 31 and 48-49 regardless of ownership, and:

(a) Provides substantial energy savings from conservation; or

(b) Provides substantial energy savings through the use of renewable resources; or

(c) Provides substantial energy savings by recovering waste heat from cogeneration systems; or

(d) Prepares or conditions alternative fuels for distribution or dispensing; or

(e) Increases industrial process efficiency through recycling market development; or

(f) Provides emergency replacement inventory of electric motors as defined in (18)(e) of this rule; but

(g) Does not include space conditioning for human comfort or general illumination.

(22) "Lease Contract": A contract between a lessor and a lessee of an energy or conservation project.

(a) In a lease-purchase contract the lessee owns the project at the end of the lease and is eligible for the BETC.

(b) In a lease or lease-option contract the lessor owns the project through the life of the contract and is eligible for the BETC.

(23) "Least Cost Plan": A least cost plan filed by an Investor Owned Utility (IOU) as defined in ORS 757.005 and acknowledged by the Oregon Public Utility Commission (OPUC) under Order Number 89-507.

(24) "Lighting Project": Means a project that will reduce the affected lighting system energy use by at least 25 percent and complies with BETC Technical Requirements, including reporting for non-residential structures whether any lamps replaced in the project or that will be subsequently replaced will be recycled and, if so, how.

(25) "Low Interest Loan":

(a) For an electric utility, a loan with interest that is not more than 6-1/2 percent per year for those measures identified as cost effective in the utility audit. All other measures identified in the utility audit will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned under these rules. If the principal or interest is reduced to zero by applying the present value of the credit without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentive as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.

(26) "Mass Transit District": A mass transit district included in ORS 184.675(7).

(27) "Metropolitan Service District": A metropolitan service district included in ORS 184.675(7).

(28) "Necessary Feature": A feature for which its primary purpose is:

(a) Complying with the Building Code, including remodeling or new construction that includes energy or conservation projects to comply with the Building Code;

(b) Complying with specific state or federal statutes or requirements for pollution control or recycling project equipment. Recycling projects are necessary features except as noted in OAR 330-090-0110(43); or

(c) Routine maintenance or repair, such as replacing water damaged insulation or a broken window.

(29) "Net Present Value": A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140(1)(b).

(30) "Organization": A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit corporation, or federal, state or local government including school district, water district, or any other special district.

(31) "Parking Cash Out" means a cash allowance or a transit pass to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle.

(32) "Pass-through Option": A project owner receiving a preliminary certification on or after October 8, 2001 and who has not yet received the BETC may transfer the tax credit certificate to persons or businesses with an Oregon income tax liability in return for a cash payment equivalent to the net present value.

(33) "Pass-through Partner": A person or business or persons or businesses with an Oregon income tax liability accepting a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

(34) "Preliminary certification": Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

(35) "Premium Efficient Appliance": An appliance that has been certified by ODOE to have premium energy efficiency characteristics. Residential appliances are listed in ODOE's Alternative Energy Devices Systems Directory. Commercial appliances are listed in ODOE's Premium Efficient Commercial Appliances Directory.

(36) "Project Eligible Square Footage": For the purpose of calculating the tax credit amount for a Sustainable Building Project, project eligible square footage includes all temperature-conditioned floor areas, and the ground-level footprint area of parking structures or parking structure elements of the project. It does not include exterior square footage beneath overhangs, awnings, canopies, walkways or unconditioned plaza areas beneath conditioned portions of the building.

(37) "Project Operator": The person or people to whom the applicant gives authority to manage a project. Such person or people will be the applicant's agent for all reasons related to the project once its development begins.

(38) "Project Owner": An applicant who purchases and owns a qualified project.

(39) "Project Start": The date the applicant chooses to write on the preliminary certificate application that meets one or more of the following criteria:

(a) A non-refundable deposit is placed on the energy or conservation project equipment;

(b) A purchase order is placed for the energy or conservation project equipment;

(c) A contract is executed for the design of the energy or conservation project;

(d) A document is executed that obligates the applicant to proceed with an energy or conservation project; or

(e) The date energy or conservation project information for a preliminary certification application is received by a cooperative agreement organization.

(40) "Public Purpose Organization": The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.

(41) "Qualified Transit Pass Contract": A purchase agreement entered into between a transportation provider and an organization, the terms of which obligate the organization to purchase transit passes on behalf or for the benefit of riders over a specified period of time.

(42) "Recycling": A process to change a waste product into a useable product or material. It includes refining used oil, chlorofluorocarbons, and halons. It does not include re-use in the same way the product or material first was used unless it changes the product or material. It does not include the combustion or incineration of a waste stream, although these waste remediation processes may be a part of an "Energy Project" where they include characteristics required to meet that definition.

(43) "Recycling Project": Equipment used in a business for recycling in communities not subject to OAR 340-090-0030(2), or equipment used in recycling non-principal recyclable materials for specific wastesheds, as noted in OAR 330-090-0110(18)(h). It does not include any projects which

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are standard practice or for the purchase and installation of equipment that is specifically required by state or federal statute or rule. It includes:

(a) Equipment used for re-refining used oil, chlorofluorocarbons (CFC), and halons.

(b) Newly purchased vehicles with integrated recycling material sortation/collection features or changes to vehicles with integrated recycling material sortation/collection features used to transport recyclable products that cannot be used further as is. This includes but is not limited to trailers, racks, or bins that attach to such vehicles.

(c) Equipment used to process recyclable products. This includes but is not limited to balers, flatteners, crushers, separators, drop boxes, and scales.

(44) "Recycling Market Development Project": Projects that stimulate demand for recycled materials. It includes projects that meet one of the following criteria:

(a) The project uses recycled materials as feedstock to produce new products; or

(b) Equipment that allows reuse of pre or post consumer waste in the production of new products; or

(c) Recycled material equipment which yields a feedstock with new and changed characteristics for the production of new products; or

(d) Equipment that enables a higher amount of recycled material feedstock to be used in the manufacture of a product.

(45) "Renewable Energy Resource": A renewable energy resource:

(a) Does include, but is not limited to:

(A) Straw, forest slash, wood waste, or other wastes from forestland.

(B) Industrial waste, solar energy, wind power, water power, geothermal resources, or waste heat recovery.

(b) Does not include:

(A) A hydroelectric or geothermal project with more than one megawatt of installed capacity unless it is a Research, Development, and Demonstration project as defined in this section.

(B) Whole, living trees harvested for use as a fuel unless those trees have a growth cycle that will enable the trees to be replaced for use as a fuel during the service life of the project.

(46) "Renewable Resource Project": Development that uses a renewable energy resource in a business or other eligible entity to make electricity, bio-gas, alcohol, or other fuel for sale; or, to replace a substantial amount of other fuels now used or that otherwise would be used.

(47) "Research, Development, and Demonstration Project (RD&D)": A project that complies with (a) and (b):

(a) A project that is not standard practice, is likely to produce or produces products or technologies that are likely to qualify as an energy or conservation project in Oregon when commercialized, and complies with one or more of the following criteria:

(A) Research projects that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

(B) Development projects that include the new manufacture or initiation of the capability to produce or deliver energy or conservation projects in Oregon, excluding development projects that increase established manufacturing or production capacity in Oregon;

(C) Demonstration projects that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology though pilot or production scale applications of technology;

(D) Innovative travel reduction projects that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. Examples include but are not limited to Travel Smart, Fareless Square, walking campaigns, Bike Commute Challenge, and Carpool Match NW. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than \$2 million annually in eligible costs for innovative travel reduction programs.

(E) Projects that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment.

(F) Manufacturing facilities that produce renewable energy components such as wind, solar, geothermal, and other technologies.

(G) Projects in the Director's determination are likely to achieve Energy Office goals.

(b) A project that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(48) "Riders": Employees, students, clients, customers, or other individuals using transportation facilities or transportation projects for travel.

(49) "Service Life": Equipment service life is as established in the most recent edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the application for preliminary certification is received by ODOE or as determined by the Director for equipment not rated by ASHRAE. If the baseline system has exceeded its service life, only an incremental project will be considered eligible for a tax credit.

(50) "Simple Payback": The total eligible cost of an energy or conservation project divided by the expected yearly energy cost savings, stated in years.

(51) "Standard Practice": Conventional equipment or material applied in a way that it may be observed as a common or necessary feature of new and existing businesses.

(a) In new commercial construction it may include but is not limited to: electronic fluorescent ballasts; T-8 fluorescent lamps, compact fluorescent lamps that are not hard wired; parabolic louvered fluorescent fixtures; R-19 insulated walls in wood frame construction; variable air volume space conditioning systems; the portion of energy management controls that monitor for life safety, maintenance, or control process for purposes other than saving energy.

(b) In other energy projects it may include but not be limited to propane powered lift trucks, electric golf carts or curbside recycling bins.

(c) Any other equipment, material, or applications of equipment or material as determined by the Director.

(52) "Substantial Energy Savings": Means that ODOE has determined that:

(a) An energy or conservation project, other than a lighting retrofit or sustainable building project and excluding Research Development & Demonstration, transportation, recycling market development, recycling project, will save at least 10 percent of the energy used in a given system or process;

(b) A lighting retrofit project will reduce the affected lighting system energy use by at least 25 percent;

(c) The project is a sustainable building project; or

(d) The project measures are defined in the BETC Technical Requirements as measures that would qualify under or are measures recommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.

(53) "Sustainable Building Project": Means a building project as defined in section 8 of this rule that is rated and certified under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council. For a Sustainable Building Project to be eligible for a tax credit it must comply with the requirements set forth in OAR 330-090-0135 and any applicable BETC Technical Requirements.

(54) "Transportation District": A transportation district included in ORS 184.675(7).

(55) "Transportation Facility": A transportation project that reduces energy used for traveling, including but not limited to traveling to and from work or school work-related travel or travel to obtain medical or other services. This includes, for purposes of this rule, commuting to and from class. Transportation facility includes, but is not limited to, a qualified transit pass contract or a transportation services contract, a car sharing program, and a parking cash out project.

(56) "Transportation Project": An energy or conservation project that reduces energy used for traveling, including but not limited to traveling to and from work or school work-related travel or travel to obtain medical or other services. A transportation project must meet one or more of the following criteria:

(a) Telecommuting/telework defined as working from home or from an office near home instead of commuting longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telecommuting equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per calendar year. Eligible costs include purchase and installation of new or used equipment at the telecommuting site. Telecommuting equipment may include computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director. Eligible cost for telecommuting projects does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telecommute site. Eligible cost for telecommuting does not include fees for maintenance and operation of any equip-

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ment; cost for equipment other than a modem at the principal place of business; office furniture and office supplies or training costs.

(b) Telecommuting for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.

(c) Commuter pool vehicles transporting two or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per calendar year. Eligible cost includes purchase of vehicle(s). The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible.

(d) Transit passes used by an applicant's riders to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass project.

(e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 days per calendar year. Eligible cost includes purchase of bicycles and equipment used to store bicycles.

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or non-profit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation project and cannot exceed the cost of the transportation project. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.

(g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 days per calendar year. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.

(h) Car sharing defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program, including the fair market value of parking spaces used to store the cars available for the car sharing program, but does not include the cost of the fleet of cars. It does not include operations conducted by a car rental agency.

(i) Parking cash out defined as a cash allowance or a transit pass given to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle. Eligible cost for parking cash out includes the cost of providing a commuter parking space. The employer may establish the value of the commuter parking space in either of the following ways:

(A) When the employer leases the commuter parking space for market value, separate from the lease for the business premises, the employer may establish the value by documenting the cost of leasing the commuter parking space.

(B) When the employer owns the commuter parking space or leases it as an integral part of the lease for the business premises, the employer may establish the value by documenting the cost of leasing a similar parking space within 250 yards of the employer's business premises.

(57) "Transportation Provider" means a public, private, or non-profit entity that provides transportation services to members of the public.

(58) "Transportation Services Contract": A written contract or agreement that is related to a transportation facility.

(59) "Utility": Gas or electric utilities as defined below.

(a) An Investor Owned Utility (IOU) as defined in ORS 757.005, or its subsidiaries and affiliated interests as defined in ORS 757.015; or

(b) A Publicly Owned Utility (POU) and people's utility district as defined in ORS 261.010, or a municipal or cooperative utility.

(60) "Year": Calendar year.

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

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04

330-090-0120

What Qualifies for a BETC

Both the party asking for a BETC and an energy or conservation project must comply with these standards.

(1) **Standards for an Applicant** — An applicant must:

(a) Be an applicant as defined by these rules; and

(b) File, have a pass-through partner that files, or commit to select such a partner prior to final certification, an Oregon income tax return; and

(c) Own or contract to buy an energy or conservation project; or

(d) Own or contract to buy or lease an Oregon firm that will use or lease the project or sell power from the project.

(2) **Standards for an Energy or Conservation project** — An energy or conservation project must:

(a) Be an energy or conservation project as defined by these rules;

(b) Comply with or have a variance from the land use laws of the city or county where the project will be;

(c) Comply with all other local, federal, and state laws, including but not limited to the following:

(A) A water power energy project that uses navigable waters or that sells electricity must have a permit, license or exemption from the Oregon Department of Water Resources (DWR) and the Federal Energy Regulatory Commission (FERC). Also, if the project uses water from the Columbia River basin, it must comply with the Northwest Power Planning Council's Fish and Wildlife Program.

(B) A geothermal energy project must have the proper permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or a permit from DWR.

(C) A biomass energy project must have required permits from the Oregon Department of Environmental Quality (DEQ).

(d) Include only costs allowed by these rules.

(3) **Standards for Leased Energy or Conservation projects:** A BETC may be granted to the owner of an energy or conservation project which leases the project for use in connection with a private or public sector building or activity. The lessee may operate the facility in conjunction with its own building or activity, or the building or activity of another as part of an energy service contract or other contractual agreement.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 4-1991, f. & cert. ef. 12-3-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04

330-090-0130

How ODOE Handles a BETC

(1) **General:**

(a) The Director reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification.

(b) To begin the review process for each stage, or to change the project during the review process, an applicant must notify ODOE in writing.

(c) A project owner planning to use a Pass-through Partner will complete and file the Pass-through Option application form as provided in OAR 330-090-0130(8).

(2) **Preliminary Certification Preapproval:** The Director may preapprove a preliminary certification for projects that ODOE has reviewed and determined to be otherwise qualified under these rules. Such projects may include but are not limited to:

(a) Alternate energy devices qualifying for a tax credit under OAR 330-070-0010 through 330-070-0097 for which ODOE has determined qualified costs, energy savings, and eligible tax credits. This does not preclude a project owner from filing for preliminary certification to present for review and approval documentation supporting different determinations.

(b) Projects that have qualified for a tax credit based on review of a cooperative agreement organization, subject to the terms and conditions of the agreement.

(3) **Preliminary Certification Review Process:** Except as provided in OAR 330-090-0130(2), a completed application for preliminary certification shall be filed before work on an energy or conservation project begins.

(a) Within 60 days after an application for preliminary certification is filed, the Director will decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a completed application.

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(b) Within 120 days after a completed application is filed, the Director will notify the applicant of the status of the application, if the applicant has not been notified otherwise that the application has been approved or denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the tax credit approved. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) An applicant can re-submit an application that is denied if features of the project change, the applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for preliminary certification can be amended or withdrawn by the applicant before the Director issues a final certification. If an application is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

(4) A Completed Preliminary Certification Application Must Contain:

(a) The name, address, and phone number of the applicant and other parties involved in the project.

(b) The applicant's federal tax identification number or social security number for use as an identification number in maintaining internal records. The applicant's federal identification number or social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) Facts that show the party that applies for the credit is an applicant under these rules and is in accord with OAR 330-090-0120(1).

(d) Facts that show the proposed use is an energy or conservation project under these rules.

(e) Project start and finish dates.

(f) Facts that describe the project, its costs, its expected life, and its simple payback in the detail required by ODOE.

(g) The facts documenting substantial energy savings or a description of products that will result from the project.

(h) The applicant's signature on the application attesting that it is correct.

(i) A written final order permit, license, or waiver by all applicable federal, state, and local agencies.

(A) Such final written actions show without doubt that the use complies with federal, state, and local laws as provided and subject to any conditions in the actions.

(B) If such an order, permit, license or waiver is not provided, the applicant must list all actions that are needed. The applicant must list what he or she has done or will do to achieve those actions.

(C) Preliminary certification may be approved without such order, permit, license, or waiver. In that event, the preliminary certification will require the applicant to file a copy of such final action before project development begins. The Director may not grant final certification until all needed orders, permits, licenses or waivers as defined by these rules and the BETC Technical Requirements Manual are filed with ODOE.

(j) For a renewable resource project, proof the resource level is adequate for a feasible project. Such proof includes data listed in (A) through (F). Other data may be used if the listed data cannot be obtained at a reasonable cost, such as for R&D projects.

(A) For a solar energy project: A sun chart and solar insolation data for the site.

(B) For a wind energy project: The average monthly wind speed for 12 consecutive months. Measure wind speed at the hub height of a horizontal axis wind machine; or, the equator of a vertical axis wind machine; or, measure wind speed at two heights, one at least 10 meters above ground.

(C) For a geothermal energy project (except a heat pump system): A plot of well heat temperature versus time at the design flow rate at steady state temperature.

(D) For a water power project: One year of real or predicted average monthly stream flows. If flows are predicted, describe how.

(E) For a biomass energy project: Data that show the resource is available in an amount that meets the project's energy needs.

(F) For a waste heat recovery project: A table showing how much waste heat is available and from what sources.

(k) The payment required by OAR 330-090-0150(2).

(l) For wind projects with turbines of 100 kW or less: A Test Report for each version of the turbine. The Test Report must be in a form specified by American Wind Energy Association standards.

(m) For alternative fuel vehicles: proof that the vehicle or conversion equipment is on DEQ's approved list, the current exhaust emissions, the expected emission reductions, the expected annual energy and/or cost savings (if any).

(n) For alternative fuel vehicles: the number of vehicles to be converted or new vehicles purchased, the expected annual fuel savings, the type of alternative fuel used, and the expected annual amount of alternative fuel used.

(o) For alternative fuel fueling stations: description of fueling systems, the estimated number of alternative fuel vehicles that will use the station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.

(p) Other data the Director requires to assure a project complies with these rules.

(5) Preliminary Certification After Start of an Energy or Conservation Project:

(a) If an energy or conservation project has been started an applicant may file a written request with the Director for preliminary certification after project start. Such a request must contain information in accord with OAR 330-090-0130(4) and (5)(c).

(b) Within 60 days after such a request is filed, the Director will approve, deny, or postpone preliminary certification. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The Director may approve preliminary certification after project start if:

(A) The request is in accord with OAR 330-090-0120;

(B) Special circumstances make application for preliminary certification before project start up a hardship. Such circumstances include process delays beyond the applicant's control, project funding and energy supplies or markets; and

(C) The Director receives the waiver request within 90 days of project start date. Under extraordinary circumstances the Director may extend the waiver period provided the project serves the aims of the program.

(6) **How Preliminary Certification Can be Revoked:** The Director may revoke a preliminary certification for a reason listed in subsection (a) through (c) of this section. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(a) A project is not started before 1,095 days (3 years) after either the application for preliminary certification was received or an amendment of the preliminary certification was approved.

(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with ODOE before project development starts.

(c) The project undergoes changes without the changes being approved under OAR 330-090-0130(7).

(7) **Changes Between Preliminary Certification and Final Certification:** To change a project that has a preliminary certification, the applicant must file a written request with the Director. The preliminary certification will not be amended unless the Director determines that the amendment is consistent with these rules.

(a) The request must describe the change and reasons for it. It must include changes in cost, tax credit amount, project design, and materials. The change also must include the amount of energy saved or produced, financing changes, the applicant, or other matters.

(b) Within 60 days after the applicant files the change request, the Director will decide if the changed project complies with these rules. The Director will provide written reasons for the decision.

(A) If it complies, the Director will issue an amended preliminary certification.

(B) If it does not comply, the Director will issue an order that denies the change. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The applicant must inform the Director in writing if it does not proceed with the project or proceeds without the tax credit. In that case, the Director will cancel the preliminary certification.

(8) Pass-through Option Process and Application:

(a) In addition to the application for preliminary certification, an applicant planning to transfer the tax credit certificate to a Pass-through

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Partner will complete and file the Pass-through Option Application form supplied by ODOE.

(b) If the Pass-through Partner is not yet secured, the project owner will complete that section of the application by inserting "Not Identified" and will submit an updated application when the Pass-through Partner is secured.

(c) The tax credit may not be transferred until the project owner has received the net present value in full and supplied ODOE with documentation of the payment, such as a copy of the front and back of the cancelled check.

(9) **Final Certification Review Process and Application:** An application for final certification must be filed after the project is complete.

(a) Within 30 days after a final certification application is filed, the Director will decide if it is complete. If it is not complete, the Director will inform the applicant in writing what is needed to make it complete. If it is complete, the Director will process the application.

(b) Within 60 days after a completed final certification application is filed, the Director will issue an order that explains how the application does or does not comply with subsection (9)(c) of this rule.

(A) If it complies, the Director will approve final certification. Final certification will state the amount of the tax credit approved. This contingency does not include any costs determined ineligible under OAR 330-090-0110(16). It may be up to 10 percent more than the amount approved in the preliminary certification. For a Research, Development & Demonstration project, final certification may be up to 10 percent more than the amount approved in the preliminary certification if those costs were incurred within 6 months after the project begins to operate; and, if needed to make the project work better.

(B) If it does not comply, the Director will deny the final certification. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(D) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied. No sooner than 61 days or later than 120 days after a complete application for final certification is filed, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) A final certification application must include:

(A) A statement that:

(i) The project complies with conditions of the preliminary certification or with the provisions of OAR 330-090-0130(2); and

(ii) A statement that the project remains in accord with local, state, and federal laws. This includes local land use laws.

(B) An account of the project costs, including prorated costs.

(i) If project costs are less than \$50,000, the account may be records of project costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(16) unless required by the Director to supply verification from a certified public accountant, who is not otherwise employed by the project owner or pass-through partner;

(ii) If the project costs are \$50,000 or more, a certified public accountant, who is not otherwise employed by the project owner or pass-through partner, must complete a written review and summary of costs paid based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(16); or

(iii) For a sustainable building project, a copy of the project U.S. Green Building Council (USGBC) Rating Certificate, USGBC Final LEED™ Review, ASHRAE Energy Cost Budget Comparison Form (or other Energy Office approved Energy Performance Documentation), USGBC Energy Modeling Table of Comparative Assumptions, Narrative for Energy and Atmosphere Credit 1, Annual Solar Income as described in the BETC Technical Requirements and method of calculation will be accepted in lieu of project cost receipts.

(C) Proof the project is completed.

(D) If the project is leased, a copy of the lease.

(E) For Alternative Fuel Vehicles, proof of conversion must include a copy of vehicle emission test performance results from DEQ or a conversion shop.

(F) Other data the Director finds are needed to assure a project complies with these rules.

(10) **Changes After Final Certification:**

(a) The applicant must inform the Director in writing if a project that has a final certification is sold, traded, or disposed in some other way, or if the term of a leased project has ended. In that case, the Director will revoke the final certification. No later than 60 days after the Director issues an order revoking the preliminary certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(b) The new owner or new or renewed lessee of a project may apply for final certification. The request must comply with OAR 330-090-0130(8). If it complies, the Director will issue a new final certification that credits the amount approved in the old final certification not already claimed by the former owner or lessee.

(11) **Basis for Revoking Tax Credit Benefits:** For any reason listed in (a) through (d), the Director may order revocation of a final certification that has not been transferred to a pass-through partner or of the tax credit benefits received by a project owner who has transferred the final certification to a pass-through partner. A final certification transferred to a pass-through partner may be revoked.

(a) The applicant does not send the Director written notice that:

(A) The project has been moved;

(B) Title to the project has been conveyed;

(C) The project is not operating; or

(D) The term of a leased project has ended.

(b) The applicant committed fraud or did not provide correct or complete facts in an application.

(c) The applicant does not provide information about the project in a reasonable time after the Director requests it.

(d) Other changes in the project or its owner or lessor that violate these rules in the years for which the credit is claimed.

(12) **Loss of Tax Credit Benefits:** If the Director finds under OAR 330-090-0130(11) that the tax credit benefits shall be revoked, the loss of the tax credit benefits will depend on whether the final certification has been transferred to a pass-through partner and the Director's findings under OAR 330-090-0130(11).

(a) If a final certification that had not been transferred to a pass-through partner is revoked, the project owner may not claim tax credits for the years remaining as of the date of the revocation. The Director may also order payment to the State of Oregon by the project owner of up to an amount equivalent to the full tax credit benefits, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(b) If a final certification had been transferred to a pass-through partner, the Director may order the project owner to pay to the State of Oregon an amount equivalent to the net present value of tax credits for the years remaining as of the date the benefits were revoked. However, the Director may also order payment to the State of Oregon by the project owner of up to an amount equivalent to the full net present value, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(13) **Request for Reconsideration:** An applicant may request review of a decision under these rules by notifying the Director in writing no later than 60 days after the decision that is being reviewed. In addition to the written notification the applicant may request a meeting to further explain issues.

(14) **Inspections:** After an application is filed or a tax credit is claimed under these rules, ODOE may inspect the project. ODOE will schedule the inspection during normal working hours, following reasonable notice to the project operator.

(15) **Public Access to Program Records:**

(a) ODOE will not disclose data about a project, unless allowed by an applicant or required to do so by ORS 192.410 to 192.500.

(b) ODOE will provide program records in a reasonable time to a person who requests them in writing, except as provided in subsection (a) of this section.

(c) ODOE may charge in advance not more than forty dollars per hour for research, and fifteen cents per page of photocopies of requested records.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04

330-090-0135

Business Energy Tax Credit Sustainable Building Project Rules

(1) To be eligible for a tax credit, sustainable building projects must achieve a minimum rating of "Silver" using one of the U.S. Green Building

ADMINISTRATIVE RULES

Council's rating systems, listed in the BETC Technical Requirements, in effect as of the project registration date. Projects receiving a "Gold" or "Platinum" rating will be awarded proportionally larger tax credits, as calculated by ODOE. Sustainable building projects must also comply with all applicable BETC Technical Requirements.

(2) All Sustainable Building Projects must acquire a preliminary certification from ODOE in accordance with OAR 330-090-0130(3). For these projects, the project owner must submit a certified copy of the Project Registration Certificate issued by the U.S. Green Building Council, before the completion of Design Development. If an owner elects not to continue the LEED™ rating program to completion and the issuance of a rating certificate, the owner must, within 30 days, so notify ODOE in writing, and provide a statement of intent to apply for a tax credit as an energy project, if desired. Within 60 days of the statement of such intent, the owner must submit a preliminary certification application in accordance with OAR 330-090-0130(3).

(3) ODOE may, at its discretion, convert a preliminary certification for an Energy Project to a preliminary certification as a Sustainable Building Project, or accept a statement of intent to register as a Sustainable Building Project, provided that a certified copy of the U.S. Green Building Council project registration certificate is provided to ODOE within 30 days of the new preliminary certification date.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04

330-090-0140

Pass-through Option Projects

(1) **Accepting a Business Energy Tax Credit Certificate in Return for a Cash Payment Equivalent to Net Present Value of the Tax Credit.**

(a) A Pass-through Partner may accept a Business Energy Tax Credit certificate on behalf of an applicant with a project that is otherwise eligible for the tax credit in return for a cash payment equivalent to the net present value of the tax credit.

(b) Net Present Value: The minimum tax credit required to be passed through, known as the net present value, to an otherwise eligible applicant who purchases and owns a qualified project.

(A) The net present value will be determined and published at least each year and may be periodically revised by the Director.

(B) The Director may establish different net present value amounts for projects with final certifications of more than \$20,000 and for projects with final certifications of \$20,000 or less.

(C) In making a determination of the pass-through amounts, the Director may consider the inflation rates, opportunity costs, and tax consequences among other factors.

(D) The net present value for the project is the amount in effect when ODOE receives the pass-through option agreement declaring a pass-through partner, without regard to when the final certification is issued.

(2) **An Investor-Owned Utility May Choose to Become a Utility Pass-Through Partner under the Provisions of this Section or Participate as a Pass-Through Partner under Other Provisions of These Rules that Would Apply to Any Other Pass-Through Partner.**

(a) An investor-owned utility (IOU) that complies with this section may choose to become a Utility Pass-Through Partner.

(b) Preliminary certification standards and process:

(A) The application for preliminary certification must include an estimate of the total installation cost of the qualifying measures for which the applicant expects to make payments under OAR 330-090-0140(2) for that year.

(B) Within 60 days after an application for preliminary certification of the pass-through is filed, the Director shall decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a complete application.

(C) Within 120 days after a completed application is filed, the Director shall notify the applicant of the status of the application, if the applicant has not been notified otherwise that the application has been approved or denied.

(D) The application for preliminary certification of the pass-through must include a supplemental work plan, which includes a copy, or reference to any proposed or required OPUC tariff and all evaluations of the program through which the pass-through will be delivered. The applicant and ODOE must mutually agree upon the work plan and program.

(c) Final certification standards and process: Final application for a pass-through tax credit must include a summary and total of each project's owner, site address, project description or type, number of dwelling units

for multifamily projects, total project cost, energy savings, energy type saved and tax credit amount passed through. The applicant must retain records for each project including all of the information required in 110-090-0130(4) of these rules.

(A) By the last working day of each month but not more than once per month, an applicant may apply to the Director for final certification. An application must contain:

(i) An itemized list of costs for each rental dwelling unit weatherized, premium efficient appliance, each alternative fuel vehicle, alternative fuel vehicle for company use, and alternative fuel fueling station, solar or other renewable resource and the total project costs made that period for which the applicant is applying for credit.

(ii) The nominal value of credits for which the applicant applies.

(iii) The name, address, and phone number of the owner of each rental unit, alternative fuel vehicle, or alternative fuel fueling station listed in OAR 330-090-0140(2)(c)(A)(i).

(iv) Certification that each rental dwelling unit energy conservation measure (ECM) is defined in the BETC Technical Requirements as a measure that would qualify under or is a measure recommended in an energy audit completed under ORS 469.633(2).

(v) Certification that the ECMs paid for were installed and inspected in accordance with the IOU's appropriate allowed tariff(s);

(vi) Certification that the ECMs paid for were installed and inspected in accordance with the IOUs' Model Conservation Standards tariff or equivalent program as approved by ODOE.

(vii) If the project costs are \$50,000 or more or if required by the Director, a written review and summary completed by a certified public accountant, who is not otherwise employed by the project owner or pass-through partner, of costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(16).

(viii) If a contractor installed fueling station: the name, address, and phone number of the contractor as defined under OAR 330-090-0130(4) of this rule and the site at which the fueling station is installed.

(ix) The last final certification application filed each year must include complete evaluation(s) as defined in the applicant approved preliminary certification(s).

(B) Within 30 days after a final certification application is filed, the Director will approve or deny final certification, with reasons for the action. The Director will deny the final certification if the applicant has not complied with the requirements of this rule. No later than 60 days after the Director issues an order denying the final certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13). The Director will approve final certification if:

(i) The applicant provides the owners of existing rental dwelling units listed in OAR 330-090-0140(2)(c)(A)(i) with:

(I) A low-interest loan, as defined by these rules, up to \$5,000 per dwelling unit for ECMs included in OAR 330-090-0140(2)(c)(A)(iv); or

(II) A cash payment for ECMs included in OAR 330-090-0140(2)(c)(A)(iv). The payment will be the lesser of 25 percent of the cost-effective portion of the energy conservation measures, including installation (but not including the dwelling owner's own labor), not to exceed the cost of those measures; or \$350 per rental dwelling unit, plus the present value of the tax credit accrued the IOU may claim; or

(III) Such other payments approved by the Director to pay for ECMs in rental dwellings. This includes a payment for the present value of the tax credit that exceeds the amount of the low-interest loan. This payment will apply first to reduce the amount of the loan with the balance paid to the owner of the rental dwelling unit.

(ii) The amount of the credit is the sum of payments and loans listed in OAR 330-090-0140(2)(c)(A)(i) for ECMs that were installed and inspected.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04

330-090-0150

Budget Limits and Payments for BETC

(1) **Amount of Credits Allowed:** A BETC preliminary or final certification for an energy or conservation project will not be issued for more than \$10 million.

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(2) **Cost of Reviews:** ORS 469.217 requires applicants to pay all costs for the review of their applications. In order to meet this statutory requirement ODOE has established the following schedule for payments to accompany an application.

(a) Included with each application for preliminary certification must be a payment payable to ODOE, except for projects qualifying under OAR 330-090-0130(2), for which a fee must be paid with the application for final certification. For all projects except Sustainable Building Projects or qualifying under OAR 330-090-0130(2), the payment will be 0.0075 multiplied by the project eligible cost requested in the preliminary certification application, or a request to amend a preliminary certification, or 30 dollars whichever is greater. For Sustainable Building Projects, the payment will be 0.0035 multiplied by the eligible cost calculated as required under these rules and as reported in the preliminary certification application, or a request to amend a preliminary certification. For projects that qualify under OAR 330-090-0130(2), the payment will be 0.0035 multiplied by the eligible cost as requested in the final certification application.

(b) A refund of 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification was approved by ODOE. Under no circumstances will an amount over 75 percent be refunded. Conditions for which a refund may be granted are:

(A) Denial of an application for preliminary certification or for projects that qualify under OAR 330-090-0130(2) of final certification; or

(B) Denial of a portion of costs requested in an application for preliminary certification or for projects that qualify under OAR 330-090-0130(2) of final certification; or

(C) A request to amend a preliminary certification resulting in decreased eligible costs. A refund will not be granted for any costs that are included in a pending certification.

(c) If a request to amend a preliminary certification results in project re-certification with increased eligible cost then additional application payments will be paid for the additional cost as specified in (2)(a) of this rule.

(d) No projects will be exempt from these requirements including applications for BETC pass-through under OAR 330-090-0140.

(e) The payment is a required part of a completed preliminary certification application per OAR 330-090-0130(4)(j), except for projects that qualify under OAR 330-090-0130(2). Preliminary certifications will only be issued if the application is complete.

(f) In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments and which the Director of ODOE determines are incurred solely in connection with processing the application. The applicant will be advised of any additional costs the applicant must pay before the costs are incurred.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04

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Oregon Board of Dentistry Chapter 818

Adm. Order No.: OBD 2-2004

Filed with Sec. of State: 7-12-2004

Certified to be Effective: 7-15-04

Notice Publication Date: 5-1-04

Rules Amended: 818-021-0070

Rules Repealed: 818-021-0086

Subject: The amendment of 818-021-0070 clarifies language, defines the time period that continuing education records must be retained, modifies the continuing education requirements for dental hygienists, specifies that continuing education must be related to clinical patient care, and eliminates the list of approved subject areas.

Notice of Proposed Rulemaking regarding 818-021-0070 was filed previously and effective October 1, 2002, but was not filed with the Legislative Counsel Committee within the ten-day period required by ORS 183.715. This required the re-filing of a Notice of Proposed Rulemaking and a Certificate and Order for Filing Permanent Administrative Rules.

OAR 818-021-0086, regarding the reinstatement of licenses revoked for non-payment of renewal fees, is 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.

Rules Coordinator: Sharon Ingram—(503) 229-5520

818-021-0070

Continuing Education — Dental Hygienists

(1) Each dental hygienist must complete 24 hours of continuing education every two years. Continuing education (C.E.) must be directly related to clinical patient care or the practice of dental public health.

(2) Dental hygienists must maintain records of successful completion of continuing education for at least four licensure years consistent with the licensee's licensure cycle. (A licensure year for dental hygienists is October 1 through September 30.) The licensee, upon request by the Board, shall provide proof of successful completion of continuing education courses.

(3) Continuing education includes:

(a) Attendance at lectures, study clubs, college post-graduate courses, or scientific sessions at conventions.

(b) Research, graduate study, teaching or preparation and presentation of scientific sessions. No more than six hours may be in teaching or scientific sessions. (Scientific sessions are defined as scientific presentations, table clinics, journal articles, poster sessions and lectures.)

(c) Correspondence courses, videotapes, distance learning courses or similar self-study course provided, that the course includes an examination and the dental hygienist passes the examination.

(4) At least three hours of continuing education must be related to medical emergencies in a dental office. No more than two hours of Practice Management and Patient Relations may be counted toward the C.E. requirement in any renewal period.

(5) Dental hygienists who hold a Class 1 (nitrous oxide) Anesthesia Permit must meet the requirements contained in OAR 818-026-0040(9) for renewal of the Class 1 Permit.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 279.250(9)

Hist.: DE 3-1987, f. & ef. 10-15-87; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-020-0073; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; OBD 9-2000, f. & cert. ef. 7-28-00; OBD 2-2002, f. 7-31-02, cert. ef. 10-1-02; OBD 2-2004, f. 7-12-04, cert. ef. 7-15-04

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Oregon Department of Education Chapter 581

Adm. Order No.: ODE 9-2004

Filed with Sec. of State: 7-9-2004

Certified to be Effective: 7-9-04

Notice Publication Date: 5-1-04

Rules Amended: 581-015-0062

Subject: The Department of Education needs to correct an unintended consequence of a rule amendment in March 2003. At the time, ODE amended OAR 581-015-0062 to comply with 34 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) 378-3600, ext. 2348 or e-mail debby.ryan@state.or.us.

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-015-0062

Nonacademic Settings

(1) School districts shall take steps to provide nonacademic and extracurricular services and activities in a manner to afford children with disabilities an equal opportunity for participation in those services and activities. School districts shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(2) Nonacademic and extracurricular services and activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both

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employment by the school district and assistance in making outside employment available.

Stat. Auth.: ORS 343.041, 343.045 & 343.055
Stats. Implemented: ORS 343.045, 343.155, 34 CFR 300.306 & 34 CFR 300.553
Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 31-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 8-2004(Temp), f. & cert. ef. 5-11-04 thru 10-15-04; ODE 9-2004, f. & cert. ef. 7-9-04

Oregon Film and Video Office
Chapter 951

Adm. Order No.: FVO 3-2004
Filed with Sec. of State: 7-15-2004
Certified to be Effective: 7-15-04
Notice Publication Date: 5-1-04
Rules Adopted: 951-001-0000
Subject: Procedure for notice of intended rulemaking.
Rules Coordinator: Susan Kaye Tong—(503) 229-5832

951-001-0000
Procedure for Notice of Intended Rulemaking

(1) **Definitions:** For purposes of this chapter of administrative rules, unless the context demands otherwise:

(a) **OFVO** or **Office** means the Oregon Film and Video Office as organized under ORS 284.300 to 284.375;

(b) **OFVO Board** or **Board** means the Oregon Film and Video Office board as organized under ORS 284.315;

(c) **Director** means the Oregon Film and Video Office executive director appointed under ORS 284.325.

(2) Before permanently adopting, amending or repealing any rule, the Oregon Film and Video Office will give notice of the intended action:

(a) In the Secretary of State's Bulletin, referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(b) By mailing a copy of the notice to persons on the OFVO mailing list established pursuant to ORS 183.335(8), at least 28 days before the effective date of the rule;

(c) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and

(d) By mailing or furnishing a copy of the notice to:

(A) The Associated Press;

(B) Capitol Press Room;

(C) The following associations:

(i) Oregon Media Production Association;

(ii) Mid-Oregon Productions Arts Network;

(iii) Media Communications Association International;

(iv) Central Oregon Film and Video Association.

(D) The following state agencies:

(i) Oregon Economic and Community Development Department;

(ii) Oregon Tourism Commission;

(iii) Oregon Arts Commission.

Stat. Auth.: ORS 284.300-284.315

Stats. Implemented: ORS 284.300-284.315

Hist.: FVO 1-2004(Temp), f. 3-12-04 cert. ef. 3-15-04 thru 9-11-04; FVO 3-2004, f. & cert. ef. 7-15-04

Oregon Forest Resources Institute
Chapter 628

Adm. Order No.: OFRI 1-2004
Filed with Sec. of State: 7-1-2004
Certified to be Effective: 7-1-04
Notice Publication Date: 4-1-04
Rules Adopted: 628-010-0020

Subject: These rules implement legislation adopted in 2003 in response to recent federal court decisions involving mandatory assessments by agricultural commodity commissions. In some of these cases the courts have held that commodity commissions may not require growers to contribute to advertising, product promotion, and similar forms of speech. It is not clear that these cases apply to the Oregon Forest Resources Institute (OFRI), nor the information which it produces and distributes. Nevertheless, in order to reduce the likelihood of legal challenge, these rules permit tax payers who might disagree with OFRI's activities the opportunity to seek a

refund of that portion of the Forest Products Harvest tax which supports OFRI's informational programs.

Rules Coordinator: Kathy Robbins—(503) 229-6718, ext. 22

628-010-0020
Preamble

These rules implement legislation adopted in 2003 in response to recent federal court decisions involving mandatory assessments by agricultural commodity commissions. In some of these cases the courts have held that commodity commissions may not require growers to contribute to advertising, product promotion, and similar forms of speech. It is not clear that these cases apply to the Oregon Forest Resources Institute, nor the information which it produces and distributes. Nevertheless, in order to reduce the likelihood of legal challenge, these rules permit tax payers who might disagree with OFRI's activities the opportunity to seek a refund of that portion of the Forest Products Harvest tax which supports OFRI's informational programs.

Refund of Tax Used for Publications:

(1) Any person who has paid Forest Products Harvest Tax pursuant to ORS 321.017 may apply to OFRI for a refund of that portion of the tax used to support OFRI's informational programs (such as print, television, and radio ads). Refund applications shall be made on forms provided by OFRI. The term "person" includes legal entities such as partnerships and corporations.

(2) Refund applications must include proof of payment of tax, together with any interest and penalties. Proof of payment may include any of the following: copies of checks, credit card statements, or Department of Revenue receipts for cash payments. If the applicant has paid for more than one tax in a combined payment, the applicant shall identify the amount of Forest Products Harvest Tax paid pursuant to ORS 321.017, eligible for refund from OFRI.

(3) Refund applications, together with proof of payment, must bear the notarized signature of the person seeking the refund certifying the truth of the information contained in the application. If the refund is sought by a business association (such as a corporation or partnership), the application must bear the notarized signature of a person authorized to make the application on the business association's behalf.

(4) Applications which are incomplete, contain erroneous information, or are otherwise deficient will be returned to the person seeking the refund with an explanation of the deficiency. OFRI may request additional information if necessary to evaluate the refund request.

(5) Within 60 days of receipt, OFRI will either provide the refund or return the application as incomplete, inaccurate, or otherwise deficient. OFRI will notify the Department of Revenue of all refunds made pursuant to this rule.

(6) In the event it is determined that a refund was made in excess of the amount authorized by law, OFRI shall request that the taxpayer return the excess.

(7) Any person aggrieved by a decision to deny refund, or to provide a refund in less than the amount sought, may appeal. Appeals shall be in writing, filed with the Executive Director within 30 days of the date of the decision complained of, and shall specifically state all reasons for the appeal and the relief sought.

(8)(a) Applications must be filed by March 1 for refunds of taxes in the previous year. Applications will only be accepted for taxes paid after January, 1, 2003.

(b) Applications may be filed by April 31, 2004 for taxes paid in 2003. [ED. NOTE: Applications referenced are available from the agency.]

Stat. Auth.: ORS 526.645(6)

Stats. Implemented: ORS 526.675

Hist.: OFRI 1-2004, f. & cert. ef. 7-1-04

Oregon Housing and Community Services
Chapter 813

Adm. Order No.: OHCS 3-2004
Filed with Sec. of State: 6-28-2004
Certified to be Effective: 6-28-04
Notice Publication Date: 6-1-04
Rules Adopted: 813-310-0005, 813-310-0010, 813-310-0015, 813-310-0020, 813-310-0025, 813-310-0030, 813-310-0035, 813-310-0040, 813-310-0045, 813-310-0050, 813-310-0055, 813-310-0060, 813-310-0065, 813-310-0070, 813-310-0075, 813-310-0080, 813-310-0085, 813-310-0090, 813-310-0095, 813-310-0100, 813-310-0105, 813-310-0110

ADMINISTRATIVE RULES

Subject: The Rules establish the visitability requirements for subsidized developments.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-310-0005

Purpose and Objective

OAR chapter 813, division 310 is promulgated to accomplish the general purposes of ORS 456.506 through 456.514, visitability requirements for subsidized development.

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0010

Applicability

These rules apply to the new construction of one or more rental housing units receiving development subsidies from the Department as described in ORS 456.508(7). Covered housing units include Department subsidized townhouses as well as other forms of rental housing. These rules also apply to group homes. These rules do not apply to homeownership housing, to farmworker housing located on a farm or to the acquisition, alteration, renovation or remodeling of existing structures. The visitability requirements are not the same as federal, or state accessibility or adaptability requirements.

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0015

Federal and State Requirements Resolution

Where other state and federal accessibility requirements apply, including but not limited to the Americans with Disabilities Act requirements, that differ from these visitability requirements and both apply to a subsidized development project, the more stringent requirements shall control. It should be noted that there are other accessibility requirements established in state and federal law. Chief among these are the **Oregon Structural Specialty Code**, and when applicable, the Americans with Disabilities Act or Uniform Federal Accessibility Standards. Pursuant to state code requirements, public and common use areas and facilities such as recreational facilities, laundry facilities, garbage and recycling collection areas, mailbox locations, lobbies, foyers and management offices shall be accessible in applicable multifamily housing. (chapter 11, division I — Building Accessibility, New Construction, Group R Occupancies, Section 1106.1.10-General, Oregon Structural Specialty Code).

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

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0020

Definitions

All words and terms used in OAR chapter 813, division 310, are defined as follows:

(1) "Accessible" means, as defined in ORS 456.508(1), that housing complies with federal accessibility guidelines implementing the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 et seq., as amended and in effect on January 1, 2004.

(2) "Accessible powder room" means a powder room that meets the requirements for accessibility set forth in the Oregon Structural Specialty Code as of July 1, 2004, and where applicable, the Americans with Disabilities Act or Uniform Federal Accessibility Standards as of July 1, 2004. Accessibility requirements include the provision of greater maneuverability in a powder room than is provided by visitability requirements.

(3) "Adaptable powder room" means a powder room in which the fixture design, clear floor space, and wall reinforcing meet the requirements set forth in Division III — Covered Multifamily Dwellings, Section 1110.6.4 Toilet and Bathing Fixtures of the Oregon Structure Specialty Code as of July 1, 2004.

(4) "Common living space" means, as defined in ORS 456.508(2), a living room, family room, dining room or kitchen.

(5) "Contiguous units" means, as defined in ORS 456.508(3), units that are on the same tax lot or on contiguous tax lots that have a common boundary. Tax lots that are separated by a public road are contiguous tax lots for purposes of these rules.

(6) "Curb ramp" means a short ramp cutting through curb or built up to it.

(7) "Group home" means a single-family residence intended to house eight or fewer unrelated people as determined by the Department on a case

by case basis. For purposes of this division, a group home is defined as a single dwelling unit.

(8) "Maximum threshold height" for an entrance or doorway means the maximum vertical distance between the top of the threshold and the adjacent interior or exterior floor surface.

(9) "New" means, as defined in ORS 456.508(4), that the housing being constructed did not previously exist in residential or nonresidential form. "New" does not include the acquisition, alteration, renovation or remodeling of an existing structure.

(10) "Oregon Housing and Community Services," "Department" and "OHCS" mean the Oregon Housing and Community Services Department of the State of Oregon.

(11) "Powder room" means, as defined in ORS 456.508(5), a room containing at least a toilet and a sink.

(12) "Ramp" means a traveling surface that has a running slope of greater than one unit vertical in 20 units horizontal.

(13) "Ramp slope" means the ratio of vertical rise (y) of a ramp to its horizontal run (x).

(14) "Rental housing" means, as defined in ORS 456.508(6), a dwelling unit designed for non-owner occupancy under a tenancy typically lasting six months or longer. For purposes of this division, rental housing also means month to month and fixed-term tenancies and transitional housing, but not emergency housing.

(15) "Shared community room" means an indoor space for common use by tenants or visitors that can be used for tenant meetings, education or recreation. A shared living room in a group home is not considered to be a shared community room.

(16) "Significant amount of financial aid" as contributed by another government agency to a subsidized development means either:

(a) 25 percent or more of the anticipated total development cost at the time of initial funding, or

(b) Project based rental assistance for a minimum of 50 percent of the units for an anticipated period of multiple years.

(17) "Subsidized development" means:

(a) As defined in ORS 456.508(7), rental housing that receives one or more of the following development subsidies from the Oregon Housing and Community Services Department.

(A) The federal low-income housing tax credit under 26 U.S.C. 42(a), if no part of the eligible basis prior to the application of 26 U.S.C. 42(i)(2)(B) was financed with an obligation described in 26 U.S.C. 42(h)(4)(A), all as amended and in effect on January 1, 2004;

(B) A farmworker housing tax credit, as described in ORS 315.164;

(C) A loan that qualifies the lending institution for a subsidized housing loan tax credit, as described in ORS 317.097;

(D) Funding under the federal HOME Investments Partnership Act, 42 U.S.C. 12721 to 12839, as amended and in effect on January 1, 2004;

(E) Moneys from the Oregon Housing Trust Fund created under ORS 458.620; or

(F) Moneys from other grant or tax incentive programs administered by the Oregon Housing and Community Services Department under ORS 456.559.

(b) Does not include housing that is not receiving funding from a development subsidy described in OAR 813-310-0020(17)(a) and has been subsidized with OHCS bond financing, for purposes of these rules.

(18) "UBC Requirements" means requirements found in Chapter 11 of the State of Oregon Structural Specialty Code, as of July 1, 2004. (Based on the Uniform Building Code).

(19) "Undue costs" means construction costs that, as determined by the Department, are unreasonably in excess of the costs normally associated with meeting the Department's architectural requirements, but otherwise would be necessary to meet the requirements of these rules. Undue costs include without limitation those costs that exceed \$1,000 above the costs necessary to meet Department architectural standards without the requirement of this division when calculated on a unit by unit basis. (For example, the Department has the expectation that town homes have both a front and rear exterior entrance. The cost of providing a clear visitable path to a visitable entrance would not include the door itself. The cost could include ramping and the incremental cost of a larger door.) Undue costs for a community powder room includes costs that exceed \$2,000 for visitability alterations. The Department may grant an exemption or partial exemption from any part of the visitability requirements for undue cost reasons even when excess costs are below \$1,000 per unit or \$2,000 for a community powder room, if the Department determines the situation is justified based on factors including, but not limited to:

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(a) The cost of a specific alteration relative to the visitability achieved thereby.

(b) The existence of alternative visitability comparable to that to be achieved by the alteration.

(20) "Undue constraints" means financial or other factors that in the determination of the Department may inappropriately limit the development or its operation. An oddly shaped property, for example, may justify consideration for exemption from the visitability requirements regarding external ramps. Another example may be the security or staffing associated with having 24-hour availability for the community powder room. Factors the Department may consider in making such a determination include, but are not limited to:

(a) Whether applying these rules may result in a loss of units.

(b) Whether applying these rules may result in a need to raise rents by a significant amount (loss of affordability);

(c) Whether applying these rules may result in a significant increase in maintenance or ongoing expense.

(21) "Visable" means, as defined by ORS 456.508(8), capable of being approached, entered and used by individuals with mobility impairments, including but not limited to individuals using wheelchairs.

(22) "Visable exterior route" means a visitable route of travel between the site perimeter and a visitable unit entrance. For example, in a multistory structure with an elevator, this means a route from the building entrance to a specific unit entrance. It also refers to a route of travel between a visitable unit and common use areas such as parking, lobbies, mailboxes, management offices, recreational facilities, laundries, and garbage and recycling areas.

(23) "Visable interior route" means a visitable route inside a visitable unit.

(24) "Walk" means an exterior pathway with a prepared surface intended for pedestrian use including general pedestrian areas such as plazas and courts.

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

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0025

Visitability Requirements

Except as provided in ORS 456.513 and consistent with these rules, the Department may not provide funding for the development of new rental housing that is a subsidized development unless:

(1) Each dwelling unit of the housing meets the following requirements:

(a) At least one visitable exterior route leading to a dwelling unit entrance that is stepless and has a minimum clearance of 32 inches.

(b) One or more visitable routes between the visitable dwelling unit entrance and a visitable common living space.

(c) At least one visitable common living space.

(d) One or more visitable routes between the dwelling unit entrance and a powder room.

(e) A powder room doorway that is stepless and has a minimum clearance of 32 inches.

(f) A powder room with walls that are reinforced in a manner suitable for handrail installation. For purposes of this paragraph, handrail means grab bar.

(g) Light switches, electrical outlets and environmental controls that are at a reachable height.

(2) For a development that has a shared community room or that has 20 or more contiguous units, there is at least one community powder room available for all tenants and guests that is accessible, except as provided by OAR 813-310-0030(2). This requirement does not apply to group homes.

(3) For a multi-story structure without an elevator, this section applies only to dwelling units on the ground floor of the structure.

(4) The visitability requirements of ORS 456.510 enumerated in this section do not apply to farmworker housing located on a farm.

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0030

Community Powder Room

(1) Except as provided by subsection (2) of this section, the required community powder room shall be available for use 24-hours per day, 7 days per week. This availability may be provided by on-site or on-call staff, through the use of keys, keypads or electronic code locks, or by other means, as approved by the Department.

(2) Group homes are exempt from the community powder room requirements.

(3) A subsidized development shall also be exempt from the requirement to make the required community powder room available for use 24-hours per day if justification is provided to the Department demonstrating that all of the visitable units in the development include an adaptable powder room that meets the requirements of OAR 813-310-0025 and also has at least one grab bar. The grab bar shall be installed on the wall beside the toilet and shall meet ADA standards as of July 1, 2004, for proper installation, diameter and length. (In considering whether all the units of a subsidized development have met the provisions of this subsection, the Department will exclude units that have already been given a full exemption from the powder room visitability requirements.) In addition to providing adaptable powder rooms in visitable units, an applicant requesting this exemption shall provide a list to OHCS of the hours that the community powder room will be available. Where the Department grants an exemption under this provision, the Department shall encourage that subsidized development to provide access upon request to any community powder room, where feasible.

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

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0035

Visitable Exterior Route Requirements

Each visitable unit must be connected to common use areas (such as parking, lobbies, mailboxes, management offices, recreational facilities, laundries and garbage and recycling areas) by a visitable exterior route.

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0040

Walk, Ramp, Handrail and Curb Ramp Requirements

To satisfy the visitability requirements of this division, relevant walks, ramps, handrails and curbs must meet requirements as follows:

(1) Walks. Walks along a visitable exterior route shall meet the following criteria:

(a) Width. The minimum clear width of a walk shall not be less than 36 inches.

(b) Slope and Rise. The slope of a walk shall not exceed one unit vertical in 20 units horizontal (5% slope).

(c) Cross Slope. The cross slope of a walk shall not exceed one unit vertical in 33 units horizontal (3% slope).

(d) Edge Protection. Along a visitable exterior route, a continuous 2 inch high curb shall be required on both sides of walks that are 12 inches or higher above the adjacent grade. This applies to both flat and sloped portions of walks, regardless of size, as well as flat areas such as plazas and courts. Along a sloped walk, a portion of which requires a curb, the height of the curb shall gradually taper until the walk is no higher than 2 inches above adjacent grade.

(2) Ramps. Ramps along a visitable exterior route shall meet the following criteria:

(a) Width. The minimum clear width of a ramp shall not be less than 36 inches.

(b) Slope. The maximum slope of a ramp shall not exceed one unit vertical in 12 units horizontal (8.33% slope). The maximum rise for any run shall be 30 inches.

(c) Cross Slope. The cross slope of a ramp shall be a maximum of one unit vertical in 33 units horizontal (3% slope).

(d) Surface. Ramps along a visitable exterior route shall have a firm, stable, slip resistant surface.

(e) Landings. Ramps along a visitable route shall have landings at the top and bottom, and at least one intermediate landing for each 30 inches of rise. Landings shall have a minimum dimension, measured in the direction of travel of 60 inches. The width of any landing may not be less than the width of the ramp. Where the ramp changes direction, the minimum size of the ramp shall be 60 inches by 60 inches.

(3) Curb Ramps. Curb ramps shall be required where curbs lie along a visitable route.

(a) Width. Curb ramps shall have a minimum width of 36 inches.

(b) Slope. Curb ramps shall have a maximum slope of 1 unit vertical to 12 units horizontal. Transitions from curb ramps to walks, gutters and vehicular ways shall be flush and free of abrupt changes in height.

(c) Side Slopes. Curb ramps located where pedestrians must walk across the ramp shall have sloped sides whose slope does not exceed 1:10.

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(d) Surfaces. Curb ramps along visitable exterior routes shall have a firm, stable, slip resistant surface.

(e) Location. Curb ramps shall be built so as not to project into vehicular ways or be located within accessible parking spaces.

(4) Handrails. Ramps with a total rise of 12 inches or less or a horizontal projection of 144 inches or less are not subject to the handrail requirement. The handrail requirement must be met on all other ramps. Where handrails are required, the handrail must meet the requirements set forth in chapter 11, division II-Element Requirements, Section 1109.10.11.3, Structural Strength, of the Oregon Structural Specialty Code as of July 1, 2004. Handrails shall have an outside diameter of not less than 1 1/4 inches or more than 2 inches, a 1 1/2 inch clear distance between the handrail and an adjacent wall, and must extend the full length of the ramp, including the landing. Unless otherwise required by federal or state code, a handrail on one side of the exterior visitable route is sufficient and need not include extensions beyond the length of the ramp and landing.

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

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0045

Visitable Exterior Unit Entrance Requirements

Visitable exterior unit entrances to dwelling units shall meet the following criteria:

(1) Adjacent Surfaces. Each visitable entrance shall have a flat surface immediately adjacent to and level with the entrance. On the exterior, the surface may be sloped for drainage at a rate of no greater than 1 unit vertical to 50 units horizontal (2% slope). The surface shall be at least 36 inches wide. It shall be at least 48 inches deep in the direction of travel on the push side of the door and not less than 60 inches deep in the direction of travel on the pull side of the door. Where the door is not in the direction of travel, the minimum size of the flat surface shall be 60 inches by 60 inches.

(2) Exterior Door Width. An exterior door shall have a clear opening of at least 32 inches.

(3) Threshold. The maximum threshold height shall be 3/4 inch for exterior sliding doors and 1/2 inch for all other exterior doors. The threshold shall be beveled down to the adjacent surface at a slope not steeper than 1:2.

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0050

Visitable Interior Route and Doorway Requirements

(1) Hallways along a visitable route shall have a minimum clearance of 36 inches, and doorways along that route shall have a minimum clearance of 32 inches.

(2) The maximum threshold height for visitable interior doors shall be 1/2 inch. The threshold shall be beveled down to the adjacent surface at a slope not steeper than 1:2.

(3) The visitable powder room doorway shall have either an exterior swing door, a pocket door, or an interior swing door. An exterior swing door shall not block access along the visitable interior route, in the Department's determination. An interior swing door shall not block the reasonable use of the fixtures in the powder room, in the Department's determination.

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0055

Light Switches, Electrical Outlets and Environmental Control Requirements

Light switches, electrical outlets and environmental controls in the dwelling units shall be installed no lower than 15 inches, or any higher than 48 inches, above the adjacent floor level.

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0060

Group Home Visitability Requirements

Group homes are generally considered to be a single unit. Consequently, as with a single unit, these rules require only one visitable exterior route, one visitable entrance, and one powder room with a visitable interior route and a visitable doorway for a group home. The shared space in a group home is not considered to be a shared community room as defined in OAR 813-310-0020(15) and is not subject to the visitability and

availability requirements outlined in OAR 813-310-0025(1)(b) and 813-310-0030 for shared community rooms.

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0065

Exemptions

The Department shall exempt new rental housing that is a subsidized development from compliance with the requirements of OAR 813-310 if the Department determines that the exemption is warranted by:

(1) The topography at the construction site. An exemption or partial exemption from these rules may be considered where topography or other considerations (flood plains, conservation areas) are determined by the Department to make compliance impracticable. Undue expense resulting from adjustments to accepted construction methods arising from specific site conditions might also qualify for an exemption. For example, providing both an exterior visitable route and adequate drainage at the building perimeter on a flat site may require unusual foundation design that unreasonably adds to project cost.

(2) Community and design standards. Community and design standards, refer to local government development codes or to previously adopted and binding CCRs (covenants, conditions and restrictions). They do not refer to neighborhood or project management design preferences. Where possible, projects should adapt to meet the community and design standards and all visitability requirements. If new community and design standards are imposed after a project has already been submitted for funding by the Department and the Department determines that the new standards conflict with the visitability requirements of this division, an exemption may be granted for the project.

(3) Undue costs or constraints (see the definitions at OAR 813-310-0020(19) and (20)); or

(4) Conflicting funding requirements of another government agency if the agency contributes a significant amount of financial aid for the housing (see the definition at OAR 813-310-0020(16)).

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0070

Application for Exemptions from Visitability Requirements

(1) To request an exemption from any rule under Chapter 813-310, the applicant must complete an OHCS Exemption Request Form. Exemption Request Forms may be obtained by contacting the OHCS Housing Resources Section. They are also available on the OHCS website at: <http://www.hcs.state.or.us/>.

(2) In requesting an exemption, an applicant must list the category of each visitability exemption as described in OAR 813-310-0080 and must submit a written statement providing thorough justification about why each exemption is needed. An applicant may seek exemption pursuant to more than one exemption category. Consistent with the category of the requested exemption or exemptions, the written statement should include information regarding topographic conditions, community and design standards, construction costs, constraints, sources of funding or other matters as necessary to adequately describe the circumstances relating to the exemption request. If the exemption request is based upon design standards, the written statement shall address whether it would be reasonably possible to obtain from the local government an exemption from the local design standard. In addition, the statement shall indicate whether the applicant is seeking a full or partial exemption.

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

Stat. Auth.: ORS 183 & 456.514

Stats. Implemented: ORS 456.506 - 456.514

Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0075

Approval or Disapproval of Requested Visitability Exemptions

(1) The Department may grant exemptions to the visitability requirement of this division in a manner and to a degree consistent with these rules, acting on its own initiative or at the request of an applicant for a development subsidy.

(2) The final approval of an exemption or partial exemption request may be given for more or less than requested. Partial exemptions may be granted as follows:

(a) Partial exemption from meeting all of the visitability requirements. The Department may grant an exemption for one aspect of the visitability requirements without granting exemption from other visitability requirements. For example, an exemption from exterior visitability require-

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ments may be granted for topographical reasons, without exempting interior or visitability requirements.

(b) Partial exemption from full compliance with visitability requirements — The Department may grant a partial exemption from full compliance with any visitability requirement. For example, a ramp that cannot meet the visitability standard may be given a partial exemption that still requires the ramp to meet a certain standard which in the determination of the Department is the best that can be achieved under the circumstances.

(c) Partial exemption for one or more units. The Department may grant an exemption or partial exemption for one or more of the units in a development. For example, it may be that one unit in a development requires an exemption while others do not merit such an exemption.

Stat. Auth.: ORS 183 & 456.514
Stats. Implemented: ORS 456.506 - 456.514
Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0080

Classifying Exemptions

For administrative purposes including without limitation, for purposes of justification, record keeping and analysis of exemptions, the Department may classify exemptions into the following categories, or combination of such categories:

- (1) Topography.
- (2) Funding conflicts.
- (3) Undue cost.
- (4) Undue constraint.
- (5) Initial project rejection (see OAR 813-310-0095).
- (6) Community and design standards.
- (7) With regard to the availability of the community powder room, the provision of adaptable powder rooms with grab bars in each visitable unit.

Stat. Auth.: ORS 183 & 456.514
Stats. Implemented: ORS 456.506 - 456.514
Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0085

Exemption Request Timing

(1) Exemptions may be requested by an applicant or allowed by the Department at any time during the development of a project prior to the issuance of a certificate of occupancy. The Department encourages exemption requests prior to the submittal of Consolidated Funding Cycle applications as this enables more realistic budgeting. However, this may not always be possible. For example, a city may impose a design standard through the plan review process after the Consolidated Funding Cycle awards have been made.

(2) An exception to this timing deadline will be allowed to request an exemption from the 24-hour availability requirement for a community powder room, as there may be operational issues that arise after occupancy that were not considered during the design or building stages of the project. Such an exemption request may be made and considered at any time during the life of the project.

Stat. Auth.: ORS 183 & 456.514
Stats. Implemented: ORS 456.506 - 456.514
Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0090

Good Faith

An applicant who requests an exemption from the requirements of these rules must act in good faith in making the request and in performing any action prior to and related to the request, including the creation of the conditions that support the need or justification for an exemption.

Stat. Auth.: ORS 183 & 456.514
Stats. Implemented: ORS 456.506 - 456.514
Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0095

Exemption for Funding Rejection Prior to July 1, 2004; Continued Funding

Until July 1, 2006, the Department may exempt projects that were submitted and rejected for Consolidated Funding Cycle funding prior to the effective date of these rules, July 1, 2004, if compliance with these rules would add significant cost to development of the re-submitted project. The Department may continue to provide funding after July 1, 2006, to complete any project approved for funding prior to July 1, 2006.

Stat. Auth.: ORS 183 & 456.514
Stats. Implemented: ORS 456.506 - 456.514
Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0100

Remedies

At their own expense, applicants, owners or developers of any development subject to the rules of this division shall prepare, execute and record, in form, manner and content as the Department may require, such documents as the Department may require, including but not limited to restrictive covenants addressing among other things the development and maintenance of visitability standards. In addition to any other rights arising thereunder, or otherwise available at law, the Department may withhold the reimbursement of development subsidies because of noncompliance with the terms of those documents.

Stat. Auth.: ORS 183 & 456.514
Stats. Implemented: ORS 456.506 - 456.514
Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0105

Effective Date

The rules in OAR 813-310 become operative July 1, 2004.
Stat. Auth.: ORS 183 & 456.514
Stats. Implemented: ORS 456.506 - 456.514
Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

813-310-0110

Waiver

The Department may waive or modify any requirement of OAR 813-310, unless such waiver or modification would violate applicable state or federal statutes or regulations.

Stat. Auth.: ORS 183 & 456.514
Stats. Implemented: ORS 456.506 - 456.514
Hist.: OHCS 3-2004, f. & cert. ef. 6-28-04

Oregon Liquor Control Commission Chapter 845

Adm. Order No.: OLCC 8-2004

Filed with Sec. of State: 6-29-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 1-1-04

Rules Amended: 845-008-0045

Subject: This rule regulates Full On-Premises Sales licensees which are private clubs in regard to the definitions of members, guests, and requirements for selling and serving alcohol to its members, as well as the conditions under which the private club may provide service to non-members.

We have amended the rule to change the definition of auxiliary member, and to remove the requirement that auxiliary members must sign in as guests.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-008-0045

Service to Guests by Full On-Premises Sales Licensees

(1) Purpose. The Commission grants Full On-Premises Sales licenses to private clubs so that they may sell and serve alcoholic beverages to members and guests. The purpose of this rule is to define member and guest.

(2) Prohibited Sale of Alcoholic Liquor. Licensees holding a Full On-Premises license may not sell or make alcoholic beverages available except to members and guests, as defined in this rule.

(3) Member Defined. A member is a person or entity who pays dues and has full time membership privileges in the club or who is a full time member of an organization that has reciprocal privileges with the club. An auxiliary member is the spouse of a member of the private club, or the spouse of a deceased member of the club. Auxiliary members do not have to sign in as guests at the club where their spouse is a member, or at a club where their deceased spouse was a member.

(4) Guests of Member. A guest is an individual who enjoys a bona fide guest-host relationship with a member at the private club. A bona fide guest-host relationship exists only if the individual:

(a) Is invited by a member and the member pays for all costs incurred by the guest, without reimbursement in whole or in part from anyone. The sponsoring member must be on the premises while the guest is on the premises. (Sign-in or guest list required);

(b) Is invited by the club and the club pays for all costs incurred by the individual without reimbursement in whole or in part from anyone. (Payment of standard membership fees and regular monthly dues by members does not constitute reimbursement);

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(c) Is attending a family reunion of a member, or a wedding, wedding reception, or wedding anniversary of a member or of a person in a member's family;

(d) Was personally and individually invited by the member prior to arrival at the licensed premises, and is accompanied by the sponsoring member at all reasonable times while in the licensed premises. (Sign-in or guest list required). However, if a member invites more than ten individuals affiliated with the same company, firm, or organization, the Commission will consider the invitation to be based on that affiliation. The Commission will not recognize this to be a bona fide guest host relationship under this subsection, unless the company, firm, or organization:

(A) Is a sole proprietorship, and the hosting member is the sole proprietor;

(B) Is a partnership, and the hosting member is a general partner;

(C) Is a corporation, and the hosting member is a major stockholder;

(D) Is itself a member or has been paying the hosting member's dues for at least three consecutive months prior to the activity. The member and a corporate officer or local general manager must sign an affidavit attesting to the fact that the corporation has been and will be paying all or part of the member's monthly dues. The club must keep the affidavit on file for at least one year after the activity;

(E) Is a fraternity, sorority, or alumni association, and the private club is organized primarily for members of those organizations;

(F) Is an organization made up of representatives of private clubs;

(G) Is another private club participating in an athletic exchange. (Sign-in or guest list required, unless prior approval is obtained);

(H) Is sponsoring a special activity, held no more than once per year, of the company, firm, or organization, if at least ten percent of the people attending the event are members of the private club. (Prior written authorization required).

(5) Guests of Club. In order to serve the public interest, an individual will be recognized as a bona fide guest of the club if the individual:

(a) Is participating in a special event specifically designed to provide significant economic benefit to a charity. (Prior written authorization required);

(b) Is participating in an activity that is being held in conjunction with a community-wide event or festival, such as Phil Sheridan Days and Junction City's Scandinavian Festival. (Prior written authorization required);

(c) Is participating in a sporting event that requires the special facilities of a private club. (Prior written authorization required).

(d) Is participating in an activity that no Full On-Premises Sales licensee in the area has facilities available to accommodate. (Prior written request required; sign-in or guest list required). For an activity to qualify under this subsection, the private club must send the Commission's nearest regional office a written request to host the activity and sell alcoholic beverages to the participants. The request must contain facts that show that the private club has the only adequate facilities available to accommodate the activity within a ten mile radius of the club. The Commission will determine adequacy of the facilities based on factors such as size, seating, and the willingness to provide desired food or equipment necessary for the activity. The Commission will also consider whether the facilities are available for the date and hours of the activity at a price competitive with other commercial establishments;

(A) The Commission will deny the request if it receives the written request less than 20 days before the activity, unless it determines that extraordinary circumstances exist. Therefore, if the request is not mailed to the Commission more than 20 days before the activity, the private club must explain in the request why it could not have been mailed earlier;

(B) The Commission may disapprove sale of alcoholic beverages at the activity if the request does not comply with the rule or if the Commission determines that the private club facilities are not the only adequate facilities available.

(6) Duty to Investigate. Private clubs must investigate when group reservations are made to ensure that non-members in the group are eligible to be treated as guests and served alcoholic beverages under this rule.

(7) Prior Approval. Private clubs must obtain prior written authorization from the Commission to host any activity described in subsections (5)(a) (special event for charity), (5)(b) (community-wide event), (5)(c) (special facilities), and (4)(d)(H) (special activity one time per year) of this rule. The Commission's nearest regional office must receive the request for approval at least 20 days before the activity, except in unforeseen circumstances. The Commission will notify the private club within ten working days after the receipt of the request whether the activity is approved or denied. Verbal notification shall be confirmed in writing.

(8) Guest List. Private clubs shall maintain a sign-in register or guest list showing the names of all guests, except those attending activities described in subsections (4)(c) (family reunions, wedding receptions), (5)(a) (special event for charity), (5)(b) (community-wide event), and (5)(c) (special facilities) of this rule. The register and list must also show names of sponsoring members and dates involved. They must be kept on the premises for at least one year. Guests attending activities described in subsection (4)(d)(G) (athletic exchange) of this rule must sign in unless the private club has received prior approval for the activity.

(9) Record Keeping. Private clubs shall keep on the premises for at least two years an accurate record of all activities, functions, or meetings hosted where more than ten guests were affiliated with the same company, firm, or organization. The record shall include the date, nature of activity, subsection of the rule under which the activity is authorized, name(s) of sponsoring member(s), if any, and number of people who attended. The record must be available for inspection by the Commission.

(10) Despite the prohibition of subsection (2) of this rule, a private club as defined in ORS 471.175(8) which is operating with a Full On-Premises Sales license may serve the general public if:

(a) The licensee has proposed in writing to the Commission to comply with the food service standards for commercial establishments, OAR 845-006-0460, the Commission has approved the proposal, and the club complies with the proposal; or

(b) The licensee's service to the general public is limited to hosting or holding an event that is alcohol-free.

Stat. Auth.: ORS 471, including ORS 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.175

Hist.: LCC 22-1980, f. 7-22-80, ef. 10-1-80; Renumbered from 845-010-0770; LCC 8-1982, f. 8-27-82, ef. 10-1-82; LCC 11-1982(Temp), f. & ef. 12-3-82; LCC 1-1985, f. & ef. 2-7-85; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 8-2004, f. 6-29-04 cert. ef. 7-1-04

Adm. Order No.: OLCC 9-2004

Filed with Sec. of State: 6-29-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 3-1-04

Rules Amended: 845-015-0155

Subject: This rule currently prohibits consumption of alcohol in a retail sales agency.

The Commission is amending the rule to allow limited sample tastings of distilled spirits in retail sales agencies. The sample tastings will be limited in size (no more than 2 samples per person; each sample no more than one-quarter ounce), tastings will be served by a trained server holding a service permit, and there will be no advertising of the tastings outside of the hosting retail sales agency. Servers will be employed by a manufacturer, distillery, or distillery representative, and product provided for sample tastings will be paid or otherwise provided by the manufacturer/distillery or their representative.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-015-0155

Consumption in a Retail Liquor Store

(1) The Commission allows sponsors to conduct distilled spirits sample tastings in retail liquor stores at the sole discretion of the retail sales agent for the purpose of promoting the sponsor's products. For purposes of this rule, "sponsors" are: Oregon Distillery licensees, out-of-state manufacturers of distilled spirits, importers of distilled spirits, distillery representatives, and the employees or agents of Distillery licensees, out-of-state manufacturers, importers, and distillery representatives. Sample tastings are subject to the requirements and limits described in this rule.

(2) Sample Sizes, Number of Samples per Customer. The size of each distilled spirits sample must not exceed one-quarter ounce per sample. Tastings are limited to two samples per customer per tasting session. A sponsor may not provide more than one-half ounce total of distilled spirits samples per customer per day.

(3) The product(s) provided for sample tastings must be available for sale at the retail sales agency where the sample tasting occurs at the time of the sample tasting.

(4) Identified Tasting Area. Retail sales agents who allow tastings at their retail liquor store must identify a specific tasting area. The area must be of a size and design such that the person(s) conducting the tasting can observe and control persons in the area to ensure no minors or visibly intoxicated persons possess or consume alcohol. Customers must remain in the tasting area until they have finished consuming the sample(s). In exclusive

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retail liquor stores, the tasting area may be the entire retail liquor store. In non-exclusive retail liquor stores, the retail sales agent must identify a tasting area, and keep on file at the retail liquor store a floor plan sketch identifying the tasting area.

(5) Duration of Tastings Allowed. Tastings are limited to a maximum of three consecutive hours per sponsor per retail sales agency per day. Only one sponsor at a time may conduct sample tastings in a retail sales agency.

(6) Server Requirements. Alcohol servers must have valid Oregon service permits.

(7) Record Keeping. The sponsor must keep a record of each tasting they conduct, including the date and location of each event, the products served, and the names of the servers. The sponsor must retain records of tastings for one year.

(8) Sponsor responsibilities. Sponsors must:

(a) Provide the product to be tasted, and remove any remaining product at the end of the tasting;

(b) Provide or pay for a person to serve the distilled spirits being tasted. The server must be a sponsor or an employee or agent of the sponsor;

(c) Not compensate the retail sales agent, or any employee or agent of the retail sales agent to participate in the tasting; and

(d) Not advertise the tasting outside of the retail liquor store.

(9) Retail Sales Agent Responsibilities. Retail sales agents:

(a) Must not advertise the sample tasting outside the retail sales agency; and

(b) Are responsible for liquor law violations occurring in the retail sales agency which are not related to the sample tasting.

(10) Violations Associated with the Sample Tasting. In the case of a liquor law violation associated with sample tasting (for example, service of a sample to a minor or a visibly intoxicated person), both the server and the sponsor may be held responsible for violations of Oregon liquor laws which occur due to or during the tasting. Violations which occur due to a sponsor or server violating the law will not be charged to the retail sales agent.

Stat. Auth.: ORS 471.471.030, 471.730(1) & (5)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 27-1986, f. 11-20-86, ef. 1-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03,

Renumbered from 845-015-0095; OLCC 9-2004, f. 6-29-04 cert. ef. 7-1-04

Oregon State Lottery Chapter 177

Adm. Order No.: LOTT 11-2004

Filed with Sec. of State: 6-23-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 6-1-04

Rules Amended: 177-200-0070

Subject: The new language amends subsection (2) of OAR 177-200-0070 to delete the requirement that the deck be shuffled before each deal. This amendment is necessary because of a new video poker game called 3-Way Action Poker in which the deck is shuffled once for a series of three games and not before each deal. Lottery plans to launch this game on July 1, 2004.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-200-0070

Requirements for Poker Games

Video lottery terminals offering poker games must meet the following requirements:

(1) Standard decks of 52 playing cards shall be used. Jokers may be added to the decks if the resulting payout percentages meet the requirements of OAR 177-200-0060.

(2) When the deck is shuffled, it must be shuffled randomly and frozen. All cards used for play must be taken in order from the top of the deck. All cards needed for play must be stored in the non-volatile memory of the video lottery terminal. Non-volatile memory is a device that stores information that cannot be erased or destroyed when power is disconnected to the video lottery terminal. The manufacturer need not represent the whole deck in memory. Shuffling is the process of generating the cards possibly used in the play and may be conducted in any manner that satisfies the randomness tests in OAR 177-200-0055.

(3) The program must deal the first cards in the order they are contained in the shuffled deck to the player. For draw poker games or hands, the player must have the option to hold or discard one or more of the cards initially drawn according to the game design. Any autohold features that assist players in their decision as to which of the cards to hold and discard for the chance to obtain a winning combination must be displayed. Any

cards that are discarded must be replaced by the remaining cards in the deck by a predefined process that draws any additional cards in the order they are contained in the shuffled deck.

(4) If the initial cards dealt constitute a winning hand or hands according to the game's pay table, the video lottery terminal must automatically notify the player of the winning hand or hands, display the kind of hand (e.g., one pair, two pair, three of a kind), and the potential prize amount.

(5) At the conclusion of each game play, the video lottery terminal must display the winning combinations, if any, and the amount won.

(6) An extended play option may be included as long as a prize won under that option does not exceed \$600.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.220

Hist.: LC 8-1991, f. & cert. ef. 11-25-91; LOTT 7-2003(Temp), f. & cert. ef. 6-5-03 thru 11-

28-03; LOTT; LOTT 15-2003, f. & cert. ef. 9-29-03; LOTT 11-2004, 6-23-04, cert. ef. 7-1-

04

Oregon State Marine Board Chapter 250

Adm. Order No.: OSMB 3-2004(Temp)

Filed with Sec. of State: 7-14-2004

Certified to be Effective: 7-15-04 thru 8-31-04

Notice Publication Date:

Rules Amended: 250-020-0033

Subject: Work is scheduled to begin by July 15 and run through August 31, 2004. A temporary work bridge from the north bank of the river to the island, and a portable diversion dam will be installed effectively blocking navigation. The boating closure is needed to prevent boaters from entering the channel where they may be trapped by the work bridge superstructure or inadvertently swept into the area where machinery and workers will be actively deconstructing the pipeline. The safety of boaters and construction workers needs to be safeguarded by prohibiting boats from entering the area.

Rules Coordinator: Jill E. Andrick—(503) 373-1405, ext. 243

250-020-0033

Boat Operations in Clackamas County

(1) Clackamas River:

(a) No person shall operate a motorboat in excess of "Slow-No Wake" (5 MPH) from the Highway 99 Bridge downstream to the Willamette River, May 1st through October 15th.

(b) Except for federal, state, local and tribal government agencies and authorized Northwest Pipeline Corporation employees or their agents on official business, it is illegal for anyone to operate a boat in the north channel of the Clackamas River between River Mile 8.7 and River Mile 8.3, as marked, from July 15, 2004 to August 31, 2004.

(2) Molalla River: No person shall operate a motorboat with a jet pump drive upstream of the Highway 99 Bridge.

(3) Tualatin River: No person shall operate a motorboat for the purpose of towing a person on water skis, knee board, wake board, tube or similar device.

(4) North Fork Reservoir:

(a) No person shall operate a motorboat with a jet pump drive above a point 2.3 miles upstream of the North Fork Dam;

(b) No person shall operate a motorboat in excess of a 5 MPH slow no-wake speed on that portion of the reservoir North of Highway 224 known as North Arm or within 200 feet of the entrance to North Arm, as marked.

(5) Roslyn Lake: No person shall operate a boat with a motor.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 2-1978, f. & ef. 4-5-78; MB 6-1978, f. & ef. 7-31-78; Renumbered from 250-020-

0143; MB 21-1987, f. 12-31-87, ef. 1-1-88; OSMB 7-2000, f. & cert. ef. 12-1-00; OSMB 11-

2001, f. & cert. ef. 10-29-01; OSMB 3-2004(Temp), f. 7-14-04, cert. ef. 7-15-04 thru 8-31-

04

Adm. Order No.: OSMB 4-2004

Filed with Sec. of State: 7-14-2004

Certified to be Effective: 7-14-04

Notice Publication Date: 6-1-04

Rules Amended: 250-020-0063, 250-020-0082

Subject: The Marine Board opened the rules in June of 2004 and accepted comment through June 30. The Board evaluated written comments received along with staff recommendations in deciding on

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rule language to clarify types of motors allowed at different seasons of the year. Previously rules for the New River in Coos and Curry counties are confusing as to seasonal restrictions for allowing the use of motors on boats.

Rules Coordinator: Jill E. Andrick—(503) 373-1405, ext. 243

250-020-0063

Boat Operations in Coos County

(1) No person shall operate a motorboat, except those propelled by electric motors on the following bodies of water:

- (a) Fahy Lake;
- (b) Upper Empire Lake;
- (c) Middle Empire Lake;
- (d) Lower Empire Lake.

(2) No person shall operate a motorboat at a speed in excess of 5 MPH on Bradley Lake.

(3) It is illegal to operate a boat with a motor, except for an electric motor, on the New River from March 1 to September 30. From October 1 to the end of February motors are not restricted.

Stat. Auth.: ORS 830.175

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 3-1983, f. & ef. 6-1-83; MB 10-1986, f. 7-29-86, ef. 8-1-86; MB 1-1991, f. & cert. ef. 3-22-91; OSMB 5-2001, f. & cert. ef. 3-29-01; OSMB 4-2004, f. & cert. ef. 7-14-04

250-020-0082

Boat Operations in Curry County

(1) No person shall operate a motorboat, except those propelled by electric motors, on:

- (a) Floras Creek;
- (b) Sixes River.

(2) No person shall operate a motorboat with a jet pump drive on the Pistol River.

(3) No person shall operate a motorboat on the Elk River, except:

(a) From the Ironhead ramp downstream motors 25 horsepower or less, other than those having a jet pump, are allowed;

(b) From the Ironhead ramp upstream persons who own land fronting both sides of the river may, by permit issued by the Marine Board, use a motorboat with a propeller-driven outboard motor 25 horsepower or less, and;

(c) Electric motors are allowed on the entire river.

(4) It is illegal to operate a boat with a motor, except for an electric motor, on the New River from March 1 to September 30. From October 1 to the end of February motors are not restricted.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 21-1987, f. 12-31-87, ef. 1-1-88; OSMB 1-2001, f. & cert. ef. 1-25-01; OSMB 6-2001, f. & cert. ef. 3-29-01; OSMB 3-2002(Temp), f. 6-27-02, cert. ef. 7-1-02 thru 10-31-02; Administrative correction 11-29-02; OSMB 5-2003(Temp), f. 6-12-03, cert. ef. 7-1-03 thru 10-31-03; Administrative correction 11-10-03; OSMB 4-2004, f. & cert. ef. 7-14-04

Oregon State Treasury Chapter 170

Adm. Order No.: OST 2-2004

Filed with Sec. of State: 6-23-2004

Certified to be Effective: 6-23-04

Notice Publication Date: 6-1-04

Rules Amended: 170-001-0000

Subject: Describes the procedures by which the State Treasurer shall adopt, amend, or repeal any permanent rule.

Rules Coordinator: Sally Furze—(503) 378-4633

170-001-0000

Notice of Proposed Rulemaking and Model Rules of Procedure

(1) Prior to adoption, amendment, or repeal of any permanent rule, the Agency shall give notice of its intention to adopt, amend, or repeal any permanent rule, not less than 15 days prior to the date of the proposed action:

- (a) In the Secretary of State's Bulletin;
- (b) By furnishing a copy of the notice to the following:
 - (A) Associated Press, and other media;

(B) Any interested parties requesting to be on a regular mailing list for rules adopted by the Oregon State Treasury;

(C) To members of boards and commissions working with the State Treasurer's Office that may be affected by the adoption of said rule;

(D) To all banking institutions, state money managers, and local governments that may be affected by the proposed rule.

(2) The content of the notices, the conduct of rulemaking hearings, and contest and case hearings, adoption of temporary rules and other related procedures will be in accordance with the Model Rules of Procedure adopted by the Attorney General.

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

Stat. Auth.: ORS 178.050

Stats. Implemented: ORS 183

Hist.: TD 7, f. 10-14-71, ef. 11-1-71; TD 12, f. & ef. 5-11-77; TD 1-1984, f. & ef. 10-5-84; OST 2-2004, f. & cert. ef. 6-23-04

Adm. Order No.: OST 3-2004

Filed with Sec. of State: 6-23-2004

Certified to be Effective: 6-23-04

Notice Publication Date: 6-1-04

Rules Amended: 170-002-0000

Subject: Describes the procedures by which the State Treasurer shall charge fees for certification or copying of any public records in the Oregon State Treasury's custody not otherwise exempt from disclosure.

Rules Coordinator: Sally Furze—(503) 378-4633

170-002-0000

Public Records

Pursuant to ORS 192.420 through 192.505, the Oregon State Treasury:

(1) May charge the following fees for certification or copying of any public records in the Oregon State Treasury's custody not otherwise exempt from disclosure:

(a) For each certification containing five pages or less, \$5.

(b) For each page of a certified document in excess of five pages, 5¢ per page.

(c) For uncertified copies, 5¢.

(d) For facsimile transmission, \$1 per page (excluding cover page).

(2) In addition to the charges prescribed in section (1) of this rule, an amount, as determined reasonable by the State Treasurer, to reimburse the Oregon State Treasury for the actual cost of making the records available for inspection.

(3) Shall make all public records of the Oregon State Treasury, not otherwise exempt from disclosure by law, available for inspection and/or copying during regular business hours of the Oregon State Treasury.

(4) May condition the time and manner of inspection or copying as necessary under the circumstances to protect the records and to prevent interference with the regular discharge of the duties of the State Treasurer, the Oregon State Treasury and its employees.

Stat. Auth.: ORS 178.050

Stats. Implemented: ORS 183, 192, 293 & 295

Hist.: TD 1-1990, f. 4-17-90, cert. ef. 5-1-90; OST 3-2004, f. & cert. ef. 6-23-04

Adm. Order No.: OST 4-2004

Filed with Sec. of State: 6-23-2004

Certified to be Effective: 6-23-04

Notice Publication Date: 6-1-04

Rules Amended: 170-060-0000

Subject: Describes the procedures by which the Chairman of the Commission or their designee gives notice prior to adoption, amendment, or repeal of any permanent rule.

Rules Coordinator: Sally Furze—(503) 378-4633

170-060-0000

Notice of Proposed Rulemaking

Prior to the adoption, amendment, or repeal of any permanent rule, the Chairman of the Commission or their designee shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the intended action.

(2) By providing a copy of the Notice to persons on the Commission's mailing list established pursuant to ORS 183.335 (7) at least 28 days before the effective date of the rule. Providing a copy means by mail, e-mail, notice of posting to a web-site, or any other means whereby interested parties have timely access to the permanent rule and the intended action.

(3) By providing a copy of the Notice to the following persons, organizations, or publications:

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- (a) Selected cities, counties, school districts, port districts;
 - (b) Any district or other interested party as determined by the Commission;
 - (c) League of Oregon Cities;
 - (d) Association of Oregon Counties;
 - (e) Oregon School Boards' Association;
 - (f) Oregon Bond Counsel.
- Stat. Auth.: ORS 178.050
Stats Implemented: ORS 183.355
Hist.: TD 1-1981, f. & ef. 12-18-81; TD 1-1996, f. & cert. ef. 1-26-96; OST 4-2004, f. & cert. ef. 6-23-04

Adm. Order No.: OST 5-2004

Filed with Sec. of State: 6-23-2004

Certified to be Effective: 6-23-04

Notice Publication Date: 6-1-04

Rules Amended: 170-062-0000

Subject: Describes the procedures by which the State Treasurer approves refunding of outstanding obligations prior to their optional call date. There are three permissible purposes for this refunding: 1 - a present value savings; 2 - favorable reorganization of debt; and 3 - fiscal distress. This amendment incorporates the possible use of an agreement for the exchange of interest rates when determining the present value savings of the refunding. The amendment sets a higher minimum savings threshold when an agreement for the exchange of interest rates is used in conjunction with the advance refunding issue. The ability of a municipality to do exchange of interest rate agreements was newly authorized in January 2004.

Rules Coordinator: Sally Furze—(503) 378-4633

170-062-0000

Procedure for Submission, Review and Approval of an Advance Refunding Plan

(1) An Advance Refunding Plan shall consist of:

(a) A written request for approval for an advance refunding bond sale.

The request shall include the: issuer, contact person with phone number, bond counsel, financial advisor, underwriter and trustee;

(b) An executed copy of the resolution or ordinance of the governing body authorizing submission of the plan to the State Treasurer;

(c) A statement of the primary purpose of the advance refunding sale.

Permissible purposes are:

(A) A present value savings. To effect a savings, discounted to present value;

(B) Favorable reorganization of debt. Bonds issued for a favorable reorganization of debt require a written analysis submitted by the financial advisor elaborating the benefits to the issuer;

(C) Fiscal distress. To pay or discharge all or any part of a bonded obligation or series or issue of bonds, including any interest thereon, in arrears or about to become due and for which sufficient funds are not available.

(d) A description of the bonds to be refunded, including:

(A) Date and premium, if any, when each is first callable;

(B) Semi-annual debt service to final maturity for each issue;

(C) The present value of each semi-annual payment;

(D) Par amount issued, current amount outstanding, proposed amount and maturities to be refunded;

(E) Issue or dated date;

(F) Purpose for which the bonds were issued;

(e) A description of the proposed advance refunding issue including the:

(A) Call date and premium, if any;

(B) Semi-annual debt service to final maturity;

(C) Present value of each semi-annual payment;

(D) Par amount;

(E) Proposed issue or dated date;

(F) Proposed sale and closing date;

(G) True interest rate (TIC) used to calculate debt service;

(H) Federal arbitrage yield limit.

(f) Any escrow deposit agreement, including a description of the escrow account, listing the type of securities to be used and the redemption date of the account;

(g) A Preliminary Present Value Savings Table similar to **Table 1:**

(A) Subtracting the proposed refunding bonds net debt service payments, column (B), from the refunded bonds net debt service payments,

column (A), provides the projected nominal net debt service savings, column (C). Multiplying the projected nominal net debt savings by the present value factor, column (D), equals the net present value debt service savings, column (E), for that period. Summing the period net present value savings gives the total net present value savings;

(B) Bond issuance expenses not paid from the advance refunding proceeds or the escrow account shall be subtracted from the net present value debt savings total;

(C) Cash, other than bond proceeds, added to the advance refunding proceeds to complete the escrow account shall be subtracted from the net present value debt service savings total;

(D) The present value factor is the arbitrage yield limit of the refunding bonds.

(E) Net debt service is the amount necessary to pay the principal and interest on an obligation after adding or subtracting amounts estimated to be received or paid pursuant to an agreement for the exchange of interest rates entered into with respect to such obligation.

(h) Itemization of the administrative costs, expenses or fees. The State Treasurer shall determine if the fees are comparable to similar offerings and if excessive, approval may be withheld;

(i) A copy of the contract between the issuer and the financial advisor;

(j) A completed MDAC Form 1;

(k) A final Official Statement, if the bonds have been publicly offered;

(l) A final Present Value Savings Table as described in subsection (g) of this section;

(m) A copy of the issuer's arbitrage or tax certificate;

(n) A copy of bond counsel's approving legal opinion;

(o) A copy of the escrow verification report demonstrating the ability of the escrow account to meet all future debt service and related costs relative to the refunded bonds;

(p) A copy of the underwriting or bond purchase agreement, if sold on a negotiated basis;

(q) A written statement from the financial advisor to the issuer recommending that the refunding be completed as described in section (2) of this rule.

(r) A completed MDAC Form 2; and

(s) A completed MDAC Form 3, if using a synthetic fixed rate refunding issue.

(2) Financial advisor required. The issuer shall employ an independent financial advisor whose sole function shall be to advocate the interest of and advise the issuer on the refinancing transaction. Prior to closing, the financial advisor, shall recommend in writing the desirability or undesirability of doing an advance refunding, and the reasons therefor. ORS 288.320 requires that the issuer assume a reasonable, non-contingent fee obligation to the advisor for services rendered:

(a) The contract between issuer and financial advisor shall include language substantially similar to the following: "The financial advisor, in consideration of the fees contracted for herein, agrees to exercise its best efforts on the issuer's behalf and will not be a purchaser of the refunding bonds at a negotiated sale";

(b) The contract shall also reflect the obligations of the parties in the event the sale is not consummated as planned.

(3) Significant Savings Tests. Equating or surpassing any one of the three following tests indicates that the present value savings purpose, as required by subsection (1)(c) of this rule, has been met:

(a) Present value savings of \$5 million or more; or

(b) A minimum savings ratio of 3.0 percent for a fixed rate refunding issue or a minimum savings ratio of 5.0 percent for a synthetic fixed rate refunding issue or other interest rate exchange agreement in conjunction with the refunding issue; or

(c) An annual "tax rate impact" of \$.15 per \$1,000 or more:

(A) The savings ratio is the Net Total Present Value Savings divided by the proceeds of the refunding bonds, expressed as a percent;

(B) Tax Rate Impact. This test is intended to reflect the potential favorable impact on the taxpayer of small jurisdictions. It is not intended as a precise calculation of the real tax rate impact, but rather using readily available figures, will approximate that tax rate impact. It is calculated as follows:

(i) Annual savings estimate = Net Present Value Savings Number of Maturities of Advanced Refunding Issue.

(ii) Tax Rate Impact = Annual Savings Estimate Issuer Assessed Valuation/1000.

(4) State Treasurer Approval Procedure:

(a) Preliminary Approval. Items in subsections (1)(a) through (1)(j) of this rule are initial components of an advance refunding plan and must be

ADMINISTRATIVE RULES

received prior to preliminary approval. If approved, the Oregon State Treasury will notify the issuer of its preliminary approval and state its intention to issue a final approval conditional upon:

(A) Receipt and approval of items in subsections (1)(k) through (1)(s) of this rule;

(B) The TIC of the sale and the significant savings are within the parameters set forth in paragraph (1)(e)(G) and section (3) of this rule respectively, if the refunding is being done to provide a present value savings.

(b) If the issuer does not receive preliminary approval, or denial, within 30 business days of receipt of items listed in subsections (1)(a) through (1)(j) of this rule at the Oregon State Treasury, preliminary approval shall be deemed to have been given and the issuer may proceed. However, the issuer may not proceed without preliminary approval prior to 30 business days from receipt of items listed in subsections (1)(a) through (1)(j) of this rule at the Oregon State Treasury. Plans should be submitted sufficiently in advance to allow 30 days review. The 30-day review period begins the day after all items (1)(a) through (1)(j) of this rule have been received;

(c) Final Approval. Items in subsections (1)(k) through (1)(s) of this rule are the final components of an advance refunding plan and must be received at least five working days prior to final approval. The five-day period begins after receipt of all items required for final approval.

(5) Administrative Expenses:

(a) To reimburse the Oregon State Treasury for administrative expenses incurred in reviewing proposals, a fee will be charged as authorized in ORS 288.620(3);

(b) When necessary to review complex proposals, the State Treasurer may consult recognized experts at the expense of the issuer.

(6) Ongoing Evaluation. The State Treasurer evaluates the statewide impact of advance refunding through a benchmarking process. Current bond interest rates are compiled into an "Oregon Bond Index", similar to the "Bond Buyer" a national index. Adverse trends associated with advance refunding bond sales may result in a review and revision of the savings tests, thereby diminishing any undesirable impact upon the higher priority "new money" bond issues.

(7) Waiver of Certain Provisions. The State Treasurer may waive certain provisions of this rule to accommodate unusual circumstances.

(8) If the State Treasurer finds that the advance refunding plan is not in substantial compliance with ORS 288.605 to 288.695 and this Administrative Rule, the plan shall not be approved. Written notice that the plan does not comply, and the reasons for this finding shall be sent to the issuer and its bond counsel.

(9) Submit Advance Refunding Plans to: Oregon State Treasury, Debt Management Division, 350 Winter Street, N.E. #100, Salem, OR 97301, phone number 503-378-4930.

[ED. NOTE: Table referenced is available from the Agency.]

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

Stat. Auth.: ORS 178.050

Stats. Implemented: ORS 288

Hist.: TD 2-1986, f. & ef. 6-16-86; TD 2-1990, f. 9-18-90, cert. ef. 9-19-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 5-2004, f. & cert. ef. 6-23-04

Adm. Order No.: OST 6-2004(Temp)

Filed with Sec. of State: 7-12-2004

Certified to be Effective: 7-13-04 thru 12-30-04

Notice Publication Date:

Rules Adopted: 170-060-1010

Subject: Sets terms, conditions and reporting requirements for local government issuers of bonds when entering into agreements for exchange of interest rates.

Rules Coordinator: Sally Furze—(503) 378-4990

170-060-1010

Terms, Conditions, and Reporting Requirements for an Agreement for Exchange of Interest Rates

(1) Definitions:

(a) "Issuer" means a public body as defined in ORS 288.605, (excluding the State of Oregon and its Agencies) and the Oregon Health and Science University.

(b) "Counterparty" shall mean the party to an agreement for the exchange of interest rates other than the Issuer and any guarantor of that party's obligations.

(c) "Swap Policy" means the written policy regarding the use of agreements for the exchange of interest rates adopted by the Issuer.

(d) "MDAC" or "Commission" means the Oregon Municipal Debt Advisory Commission.

(e) Terms not otherwise defined herein shall have the meanings ascribed to them in ORS 287.014 to 287.029 as amended by Chapter 195, Oregon Laws 2003.

(2) Issuers shall only enter into agreements for the exchange of interest rates as authorized by, and in compliance with, ORS 287.014 to 287.029, as amended by Chapter 195, Oregon Laws 2003.

(3) The notional amount of an agreement that relates to outstanding obligations may not exceed the principal amount of those obligations. The notional amount of an agreement that relates to obligations that the issuer expects to issue in the future may not exceed the principal amount of the obligations that the issuer reasonably expects to issue (as evidenced by a copy of the resolution, minutes of the board or other authorizing directive of the director or board as required by section 4 of this rule).

(4) With respect to an obligation or obligations that an Issuer has issued or will issue (as evidenced by a copy of the resolution, minutes of the board or other authorizing directive of the director or board), subject to Section 2, subsection 7, Chapter 195 Oregon Laws 2003, the Issuer may designate the particular obligation to which an agreement relates after execution of the agreement. Such a designation after execution of the agreement shall be considered an agreement modification, and the Issuer shall notify the MDAC of such modification in accordance with this rule.

(5) The Issuer shall have adopted a Swap Policy as part of its ongoing responsibility to manage its debt obligations. In adopting a Swap Policy, the Issuer should review and consider the current edition of the Government Finance Officers Association Recommended Practice: "Use of Debt-Related Derivatives Products and the Development of a Derivatives Policy" and the "MDAC Sample Interest Rate Swap Policy". Included in the Swap Policy, the Issuer shall provide a general description of risks related to agreements for exchange of interest rates and the means by which the Issuer will address those risks. The Swap Policy shall also provide that an analysis of the risks and benefits of each agreement shall be presented to the governing body prior to executing such agreement.

(6) The Issuer shall notify the Commission of the execution of an agreement for the exchange of interest rates by delivering to the Debt Management Division of the Oregon State Treasury, 350 Winter Street NE, Suite 100, Salem, Oregon 97301 within 30-days of its execution, the following:

(a) An MDAC Form 3.

(b) An executed copy of the resolution, minutes of the board or other authorizing directive of the director or board, specifically authorizing the Issuer to engage and participate in an agreement for the exchange of interest rates. The authorization shall state the reason that the Issuer is authorizing the agreement, shall include a finding that the agreement is being executed for permitted purposes and complies with the authorizing act and this administrative rule.

(c) The Issuer's Swap Policy.

(d) The legal opinion, if any, addressing the validity of the Issuer's obligations under the agreement for the exchange of interest rates that is delivered in connection with the agreement.

(7) An agreement shall contain terms and conditions consistent with the Swap Policy adopted by the Issuer including, but not limited to:

(a) The notional amount of the agreement;

(b) Payment terms;

(c) The term of the agreement;

(d) Insurance, collateral or other assurances of payment provided in compliance with chapter 195, Oregon Laws 2003;

(e) Provisions for termination in advance of the scheduled term;

(f) Events of default and related remedies;

(g) Assurances that the counterparty will maintain a minimum rating by at least two nationally recognized rating agencies or that the counterparty's obligations will be collateralized;

(h) Modifications to standard ISDA swap documentation, as specified in the Schedule as may be required by the Issuer's policy or governing law;

(i) Limitations on allowable collateral and frequency of the valuation of such collateral; and

(j) Agreement valuation methodology.

(8) The Issuer shall notify, in writing, the MDAC of any material change in the Issuer's obligations or benefits under the agreement for the exchange of interest rates that results from a reduction in the ratings of the Issuer, a Counterparty or guarantor.

(9) Agreement Modification or Termination. If after executing an agreement for the exchange of interest rates, the agreement is modified or terminated for any reason prior to its stated end date, the Issuer shall noti-

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fy the MDAC, in writing, within 30-days after completion of the modification and identify the reasons for such termination or modification and the anticipated change in obligation to the Issuer resulting from the termination or modification.

Stat. Auth.: ORS 287.014 - 287.029 & Ch. 195, OL 2003.
Stats. Implemented: ORS 287.014 - 287.029 & Ch. 195, OL 2003
Hist.: OST 6-2004(Temp), f. 7-12-04, cert. ef. 7-13-04 thru 12-30-04

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

Adm. Order No.: OSU 1-2004

Filed with Sec. of State: 6-23-2004

Certified to be Effective: 7-1-04

Notice Publication Date:

Rules Amended: 576-010-0000

Subject: The 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."

Rules Coordinator: Bonnie Dasenko—(541) 737-2474

576-010-0000

Fees and Charges

The University hereby adopts by reference a list of fees and charges for fiscal year 2004-2005. This 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.

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

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

Stats. Implemented: ORS 351.070, 352.360

Hist.: OSU 3-1980, f. & ef. 10-31-80; OSU 1-1982, f. & ef. 8-27-82; OSU 1-1983(Temp), f. & ef. 9-26-83; OSU 1-1986, f. & ef. 6-4-86; OSU 2-1987, f. 6-11-87, ef. 7-1-87; OSU 2-1988, f. 6-15-88, cert. ef. 7-1-88; OSU 4-1989, f. 6-13-89, cert. ef. 7-1-89; OSU 1-1990, f. 6-15-90, cert. ef. 7-1-90; OSU 6-1991, f. 6-3-91, cert. ef. 7-1-91; OSU 2-1992, f. 6-5-92, cert. ef. 7-1-92; OSU 5-1993, f. 6-9-93, cert. ef. 7-1-93; OSU 1-1994, f. 6-8-94, cert. ef. 7-1-94; OSU 2-1995, f. 6-20-95, cert. ef. 7-1-95; OSU 6-1996, f. & cert. ef. 7-1-96; OSU 5-1997, f. 6-16-97, cert. ef. 7-1-97; OSU 7-1998, f. 6-30-98, cert. ef. 7-1-98; OSU 3-1999, f. 6-17-99, cert. ef. 7-1-99; OSU 1-2000, f. 6-21-00, cert. ef. 7-1-00; OSU 5-2001, f. 6-18-01, cert. ef. 7-1-01; OSU 6-2002, f. 6-5-02, cert. ef. 7-1-02; OSU 1-2003, f. 6-19-03, cert. ef. 7-1-03; OSU 1-2004, f. 6-23-04, cert. ef. 7-1-04

Adm. Order No.: OSU 2-2004

Filed with Sec. of State: 6-23-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 5-1-04

Rules Amended: 576-030-0020, 576-030-0030, 576-030-0035, 576-030-0040, 576-030-0050

Subject: 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.

Rules Coordinator: Bonnie Dasenko—(541) 737-2474

576-030-0020

Vehicle Parking Permits

(1) From 7:00 a.m. to 5:00 p.m., Monday through Friday, all faculty, staff, and students who have motor vehicles in their possession or control parked on the OSU campus must display a current vehicle parking permit applicable to the lot in which they are parked. Use of parking areas without a properly displayed current OSU parking permit can result in a citation and a fine as established in OAR 576-010-0000. The registrant, or the faculty, staff or student in possession of the vehicle is responsible for parking violations involving the vehicle.

(2) A permit may only be used on a vehicle that is owned by, or in the possession of, the permit purchaser.

(3) Purchased permits for automobiles must hang from the internal rearview mirror or be placed on the driver's side dash of the vehicle parked on campus, so that it is clearly visible. Permits for motorcycles and motor scooters must be affixed on the front or rear fender in a readily visible place. All expired permits must be removed or covered.

(4) Student permits normally shall be purchased during academic registration. Faculty, staff, and students unable to obtain permits during academic registration may obtain permits from the Parking Services Office, phone 737-2583. Renewal applications for staff permits may be mailed to the Parking Services Office in accordance with the instructions mailed to permit holders at the beginning of the academic year. Faculty/Staff Permits may be purchased through payroll deduction over a 6-month period or less.

Stat. Auth.: ORS 351.070 & 352.360

Stats. Implemented: ORS 351.070 & 352.360

Hist.: OSU 1-1978, f. & ef. 10-16-78; OSU 3-1987, f. & ef. 6-11-87; OSU 2-1990, f. 6-15-90, cert. ef. 10-1-90; OSU 7-1991, f. 6-3-91, cert. ef. 10-1-91; OSU 3-1992, f. 6-5-92, cert. ef. 10-1-92; OSU 6-1993, f. 6-9-93, cert. ef. 10-1-93; OSU 3-1995, f. & cert. ef. 6-20-95; OSU 5-1996, f. & cert. ef. 6-21-96; OSU 2-2004, f. 6-23-04, cert. ef. 7-1-04

576-030-0030

Permits and Parking Areas

(1) Staff Permits may be purchased by all non student full or part-time employees or personnel connected with OSU:

(a) A Staff Permit may be purchased for each academic year. This permit expires on September 30 of each year;

(b) Emeritus and retired personnel who have no member of their immediate family affiliated with OSU may purchase a Staff Permit for the fee set in OAR 576-010-0000;

(c) Vehicles displaying Staff Permits may park in any OSU parking stall provided posted signs are observed. Each parking period is limited to 24 hours.

(2) Student Permits may be purchased by students to bring vehicles to the campus:

(a) A Student Permit may be purchased for each academic year. This permit expires September 30 of each year;

(b) Vehicles displaying Student Permits may park in student areas at any time. Students driving staff permitted vehicles must park in student lots;

(c) Students with Student Permits may use staff areas from 5 p.m. to 7 a.m. of the following day, Monday through Friday, when school is in session; from 5 p.m. Friday until 7 a.m. Monday; during legal holidays when school is not in session; during term breaks; and from the end of Summer Term to September 15 of each year. Each parking period is limited to 24 hours; there are no time restrictions on student parking in student parking areas;

(d) Students without permits may park in staff lots only from 5 p.m. until 7 a.m. Monday through Friday, including term breaks;

(e) Vehicles, other than commercial vehicles and bicycles, are not permitted within the central campus Monday through Friday, except as permitted by a disability permit issued under section (7) of this rule.

(3) Open parking is allowed in any parking lot which is not restricted to permit holders. There will be no charge for parking in these lots. Charges may be made during certain events.

(4) Motorcycle and Motor Scooter Permits may be purchased for each academic year. This permit expires on September 30 of each year. Motorcycles and Motor Scooters will be parked and driven on campus according to instructions in OAR 576-030-0060.

(5) Special Permits may be issued at the Parking Services Office under the following conditions:

(a) Commercial Vehicle Permits: All vehicles used by vendors or services doing business on the Oregon State University campus are required to have a permit to park, whether on the streets or in parking lots. Commercial Vehicle Permits are available from the Parking Services Office for a fee as established in OAR 576-010-0000;

(b) Businesses failing to obtain a permit are subject to citations and fines. Penalties that are not paid promptly can result in all vehicles of the offending company being barred from campus;

(c) Vehicles required to have a Commercial Vehicle Permit are all company or private vehicles used to conduct business on campus. These vehicles cannot enter the restricted core area of campus without a Commercial Vehicle Permit;

(d) Permits are not required for freight trucks and public service vehicles; i.e., telephone, electric and gas company vehicles;

(e) Temporary Permit: A Temporary Permit may be purchased by anyone wishing to park a specific vehicle, in specified locations, for short periods of time. People attending meetings and conferences on campus should use this type of permit.

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(6) Disability Permits: Faculty, students and staff who are disabled and possess a Department of Motor Vehicles disabled parking placard, should contact the Parking Services Office directly regarding their special parking needs. Faculty, staff, students, and visitors must obtain the proper campus parking permit and display their DMV placard to utilize disabled spaces.

(7) Summer Term Permits may be purchased for the fees indicated in OAR 576-010-0000. These permits expire on September 30 of each year.

(8) Replacement Vehicle Permits: A lost or stolen replacement permit will be issued after payment of the fee set in OAR 576-010-0000.

(9) Visitors' Vehicles must display Visitor or Guest Parking Permits. A "visitor" is a person not directly affiliated with OSU. Spouses and children of faculty, staff, and students are considered to be affiliated with OSU. Visitor vehicles may park in the designated Visitor or Student areas, provided all posted signs are observed. Each parking period is limited to 24 hours. Parking information is available by calling Parking Services after hours information line at 737-2583.

(10) A parking lot with metered spaces is provided for visitors, faculty, staff and students. It is located across from the OSU Bookstore. The hours of operation and the meter charges are designated on the meters.

(11) OSU Vehicle Permit Holders are authorized reciprocal parking privileges on the U of O campus.

(12) The cost of all permits referred to in this rule is set out in OAR 576-010-0000.

(13) Reserved parking spaces designated for exclusive use by any College, School, Department or other organizations, will be assessed an annual fee of two times the current Faculty/Staff Permit fee. (This includes executive officers, Bookstore, KOAC, Housing, Student Health, Beaver Club, Telecommunications, etc.) Exceptions to this requirement are visitor, disabled, loading zones, and service vehicle spaces.

(14) All motor pool vehicles on permanent or long term assignment (one month or longer) to individuals and units regularly assigned to OSU campus, shall be subject to an annual fee equal to a regular Faculty/Staff Permit, or a pro-rated fee at one-ninth the annual fee per month or portion thereof. This regulation is intended to include all motor pool vehicles regularly parking on campus as well as other vehicles owned by campus units.

Stat. Auth.: ORS 351.070 & 352.360

Stats. Implemented: ORS 351.070 & 352.360

Hist.: OSU 1-1978, f. & ef. 10-16-78; OSU 3-1987, f. & ef. 6-11-87; OSU 2-1990, f. 6-15-90, cert. ef. 10-1-90; OSU 7-1991, f. 6-3-91, cert. ef. 10-1-91; OSU 3-1992, f. 5-6-92, cert. ef. 10-1-92; OSU 6-1993, f. 6-9-93, cert. ef. 10-1-93; OSU 2-1994, f. & cert. ef. 6-8-94; OSU 3-1995, f. & cert. ef. 6-20-95; OSU 5-1996, f. & cert. ef. 6-21-96; OSU 6-1999, f. & cert. ef. 6-17-99; OSU 2-2004, f. 6-23-04, cert. ef. 7-1-04

576-030-0035

Refunds

Staff or student members who leave OSU, or are dissatisfied with the permit are entitled to refunds which will be made only for whole terms. (Fall, Winter, Spring). Upon return of the permit to Parking Services, a refund will be made. Refunds or stop of payroll deductions for permits require that permits be returned to Parking Services prior to any refund or stopping of payroll deduction. Refunds for a term will not be made if the permit is returned after the published date for late school registration for that term. Refunds will not be made if a permit has been cited more than five times during the academic year for parking violations.

Stat. Auth.: ORS 351.070 & 352.360

Stats. Implemented: ORS 351.070 & 352.360

Hist.: OSU 1-1978, f. & ef. 10-16-78; OSU 3-1992, f. 6-5-92, cert. ef. 10-1-92; OSU 6-1993, f. 6-9-93, cert. ef. 10-1-93; OSU 3-1995, f. & cert. ef. 6-20-95; OSU 5-1996, f. & cert. ef. 6-21-96; OSU 2-2004, f. 6-23-04, cert. ef. 7-1-04

576-030-0040

Driving and Parking Regulations on Campus

(1) Anyone operating a vehicle on campus shall observe speed limits, barricades, bicycle lanes, crosswalks, stop signs, and all other traffic signs and regulations, and shall drive in a safe and prudent manner. The speed limit on campus is 15 MPH except where otherwise posted. Driving or parking vehicles on sidewalks, lawns, and other areas not designated for driving or parking is prohibited.

(2) Campus traffic boundaries and parking areas are indicated on the campus parking map published by Parking Services.

(3)(a) Most parking areas are reserved for vehicles with specific permits, as indicated by posted color-coded signs and markings:

- (A) Green: Student and Visitor Permits;
- (B) Red: Faculty/Staff Permits;
- (C) Blue: Disability Permits;
- (D) White: Visitor Permits;
- (E) Brown: Open (no permit required).

(b) Other color-coded signs and markings refer to types of vehicles:

(A) Yellow: Compact cars;

(B) Gold: Motorcycles, motor scooters, and mopeds.

(4) Vehicles shall park headed into the parking stall where the end of the stall is a curb, building, fence, shrubbery or other obstruction, or parallel facing in the direction of traffic flow within indicated boundaries. On the OSU campus any area not specifically designated for parking is a "No Parking Zone."

(5) No vehicle shall be parked so as to occupy any portion of more than one parking space or stall as designated within a parking area. The fact that other vehicles may have been so parked as to require the vehicle parked to occupy a portion of more than one space or stall shall not constitute an excuse or defense for a violation.

(6) Vehicles shall not park in loading zones at any time for any purpose other than loading and unloading, and for such purpose maximum time is ten minutes, or as posted.

(7) All vehicles parked on OSU property are required to observe posted traffic and parking signs. If any of these regulations should conflict with posted signs, the signs are to be observed.

(8) Abandoned and/or immobilized vehicles left on OSU property more than 72 hours will be removed at the owner's expense unless an extension has been granted by Parking Services or by the University Police and Department of Public Safety. Unlicensed vehicles and vehicles without OSU Parking Permits parked more than 24 consecutive hours on OSU property will be considered abandoned and subject to removal.

(9) All motor vehicles driven on OSU property shall be operated by a legally licensed driver. The licensee shall have such license in his or her immediate possession at all times when operating said vehicle, and shall display it upon request of University Police, Department of Public Safety Officers, and Parking Enforcement Officers.

(10) Government vehicles not assigned a permanent parking space may be parked for a period of 24 hours in staff or student parking spaces, except those posted with restrictions. Posted regulations must be observed.

(11) All reserved spaces allocated for specific vehicles are reserved at all times.

(12) Personal notes left in a vehicle to explain unauthorized parking will not be accepted.

(13) Lack of space is not a valid excuse for violating any parking regulation.

(14) "Compact" car, as the term is used on parking signs and markings, refers to a small car that does not exceed 5'6" by 15'6".

(15) OSU is not responsible for any vehicle, or its contents, parked on OSU property or environs. Drivers assume all risk of accident and property loss, personal injury, and property damage.

(16) Persons are prohibited from living in vehicles of any kind on University property. Streets, lots and other areas are not to be used as living areas for cars, trailers, campers, motor homes, trucks, buses or other like vehicles. Violators may be cited for improper parking and/or the vehicle may be immobilized (booted) or towed.

Stat. Auth.: ORS 351.070 & ORS 352.360

Stats. Implemented: ORS 351.070 & ORS 352.360

Hist.: OSU 1-1978, f. & ef. 10-16-78; OSU 3-1987, f. & ef. 6-11-87; OSU 2-1990, f. 6-15-90, cert. ef. 10-1-90; OSU 3-1992, f. 6-5-92, cert. ef. 10-1-92; OSU 6-1993, f. 6-9-93, cert. ef. 10-1-93; OSU 3-1995, f. & cert. ef. 6-20-95; OSU 2-2004, f. 6-23-04, cert. ef. 7-1-04

576-030-0050

Penalties for Offenses

Fines in an amount set out in OAR 576-010-0000 will be imposed for:

(1) Failure to display a permit on any vehicle parked within campus boundaries in violation of these regulations.

(2) Counterfeiting, altering, defacing, or giving false information in an application or hearing or for misuse of any permit could result in the revocation of the permit.

(3) Parking in a "No Parking" area including yellow and red zones. Exception: service vehicles.

(4) Parking in an area in which either the vehicle or the vehicle driver is not authorized to park.

(5) Unauthorized parking in "Disabled" space and van access area.

(6) Parking on lawn or sidewalk.

(7) Parking in crosswalk.

(8) Parking in driving lane.

(9) Parked overtime.

(10) Unauthorized parking in a reserved space.

(11) Living in vehicles.

(12) Any other violation of these regulations.

(13) Parking in posted fire lanes.

ADMINISTRATIVE RULES

(14) Any other offenses not specified herein which are violations of the motor vehicle laws and ordinances of the State of Oregon or City of Corvallis, may be prosecuted in the appropriate state or municipal courts.

(15) A vehicle may be immobilized or towed and impounded, and is subject to towing and storage fees in addition to fines if the vehicle is a traffic hazard or a hazard to pedestrians or public safety. In the event of impoundment, the owner of the vehicle shall have a right to request that a hearing be held within five days to determine the validity of the impoundment and the reasonableness of the charges.

(16) In the event a vehicle receives five or more citations in an academic year, the Parking Administrator may do any combination of the following:

- (a) Terminate the vehicle permit;
- (b) Bar the vehicle from campus;
- (c) Boot (immobilize) the vehicle until all citation fines have been paid.

Stat. Auth.: ORS 351.070 & 352.360
Stats. Implemented: ORS 351.070 & 352.360
Hist.: OSU 1-1978, f. & ef. 10-16-78; OSU 3-1987, f. & ef. 6-11-87; OSU 2-1990, f. 6-15-90, cert. ef. 10-1-90; OSU 6-1993, f. 6-9-93, cert. ef. 10-1-93; OSU 2-1994, f. & cert. ef. 6-8-94; OSU 3-1995, f. & cert. ef. 6-20-95; OSU 5-1996, f. & cert. ef. 6-21-96; OSU 2-2004, f. 6-23-04, cert. ef. 7-1-04

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

Adm. Order No.: UO 3-2004

Filed with Sec. of State: 6-30-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 2-1-04

Rules Amended: 571-060-0005

Subject: 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.

Rules Coordinator: Deb Eldredge—(541) 346-3082

571-060-0005

Special Fees, Fines, Penalties, Service Charges

The University of Oregon has adopted by reference a list of Special Fees, Fines, Penalties, Service Charges, etc., for the current fiscal year:

(1) The fees, fines, penalties and service charges listed by reference in this rule are updated annually and copies are on file in the listed departments by July 1.

(2) The amounts and conditions of these fees may change from time to time throughout the year due to administrative considerations, changing costs, changes in institutional budgets, etc. If the size and the amount of these fees are or could be of importance to users, they should verify the details prior to making a commitment, before entering into any planning activities or before actually incurring any charges.

(3) The master copy of the current list of fees is maintained in the Office of the Director of Business Affairs and is available upon request to any person during regular business hours. The Director of Business Affairs also maintains a bulletin board where fee changes made during each 30-day period are posted. Following that posted period, the changes are filed within the master copy.

(4) University departments charging fees shall maintain a copy of at least that department's section of the list of special fees, fines, penalties and service charges including any updates made during the course of the fiscal year. The list and all current changes shall be available upon request to any person during regular departmental business hours.

(5) No department may change fees between annual amendments to this rule without first obtaining an approved statement of justification signed by the appropriate Vice-President. Prior to granting approval of any fee charged to students, the Vice-President shall consult with the Office of Student Advocacy. Changes in fees approved by the Vice-President and the justification statement shall be posted for 15 days in a public area of the departmental office. The new fee, fine, penalty or charge becomes effective at the end of the 15-day posting period after it is filed with the Director of Business Affairs along with the justification statement.

(6) However, student loan service charges, charges levied as penalties for prohibited conduct, general tuition, building fees, incidental fees, health service fees, and residence hall and housing charges, shall be adopted in accordance with the provision of ORS 183.310 to 183.500.

(7) Certain charges, fees or fee schedules may, according to ORS 351.072(b), be adopted without compliance with rulemaking provisions of ORS 183.310 to 183.500. They are: charges relating to symposiums, conferences, short courses, food, books or other retail goods, prices of admission to athletic, entertainment or cultural events or advertising rates in student or institutional publications.

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

Stat. Auth.: ORS 351.070, 351 & 352

Stats. Implemented: ORS 351.070

Hist.: UOO 20, f. & cert. ef. 4-27-76; UOO 34(Temp), f. & cert. ef. 8-8-77; UOO 37, f. & cert. ef. 9-30-77; UOO 3-1978, f. & cert. ef. 7-1-78; UOO 1-1979(Temp), f. 6-26-79, ef. 7-1-79; UOO 4-1979, f. & cert. ef. 10-3-79; UOO 7-1980, f. 6-30-80, ef. 7-1-80; UOO 7-1981(Temp), f. 6-16-81, ef. 7-1-81; UOO 9-1981(Temp), f. & cert. ef. 6-29-81; UOO 2-1982, f. & cert. ef. 4-14-82; UOO 4-1982, f. & cert. ef. 6-10-82; UOO 4-1983, f. & cert. ef. 6-10-83; UOO 5-1983(Temp), f. & cert. ef. 6-15-83; UOO 2-1984, f. 6-11-84, ef. 7-1-84; UOO 3-1985, f. 6-19-85, ef. 7-1-85 UOO 1-1986; f. 6-4-86, ef. 7-1-86; UOO 4-1986(Temp), f. & cert. ef. 11-10-86; UOO 7-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 8-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 1-1987, f. & cert. ef. 1-29-87; UOO 3-1987, f. 6-17-87, ef. 7-1-87; UOO 6-1988, f. 6-29-88, cert. ef. 7-1-88; UOO 8-1988, f. & cert. ef. 8-17-88; UOO 5-1989, f. 6-20-89, cert. ef. 7-1-89; UOO 7-1990, f. 6-14-90, cert. ef. 7-1-90; UOO 9-1991, f. 6-12-91, cert. ef. 7-1-91; UOO 1-1992, f. 4-9-92, cert. ef. 7-1-92; UOO 2-1993, f. 4-19-93, cert. ef. 7-1-93; UOO 9-1993, f. & cert. ef. 6-15-93; UOO 11-1993, f. 8-29-93, cert. ef. 9-1-93; UOO 2-1994, f. 6-13-94, cert. ef. 7-1-94; UOO 3-1994, f. 6-14-94, cert. ef. 7-1-94; UOO 4-1995, f. 6-13-95, cert. ef. 7-1-95; UOO 5-1995, f. 7-31-95, cert. ef. 8-1-95; UOO 3-1996, f. 6-6-96, cert. ef. 7-1-96; UOO 6-1997, f. 6-18-97, cert. ef. 7-1-97; UOO 7-1997, f. 6-18-97, cert. ef. 7-1-97; UO 1-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1999, f. 6-1-99, cert. ef. 7-1-99; UO 3-1999, f. 6-1-99, cert. ef. 7-1-99; UO 2-2000, f. 6-15-00, cert. ef. 7-1-00; UO 1-2001, f. 6-18-01, cert. ef. 7-1-01; UO 2-2001, f. 6-18-01, cert. ef. 7-1-01; UO 2-2002, f. 6-19-02, cert. ef. 7-1-02; UO 3-2002, f. 6-19-02, cert. ef. 7-1-02; UO 1-2003, f. 6-23-03, cert. ef. 7-1-03; UO 2-2004, f. 5-11-04, cert. ef. 7-1-04; UO 3-2004, f. 6-30-04, cert. ef. 7-1-04

Adm. Order No.: UO 4-2004

Filed with Sec. of State: 7-15-2004

Certified to be Effective: 7-19-04

Notice Publication Date: 6-1-04

Rules Amended: 571-024-0005

Subject: Updates rule to reflect changes in program, including addition of new facility and discontinuing use of old facilities.

Rules Coordinator: Deb Eldredge—(541) 346-3082

571-024-0005

EMU Child Care and Development Centers

The EMU Child Care and Development Centers (CCDC) provide child care for a fee to the extent that funding, licensed space, and available time permit. The centers are intended primarily to serve the needs of University of Oregon student families, seeking to achieve balance between child care needs of student parents and the need to provide continuity of child care for children and families. When space and time allow, after student families have enrolled, University employees and community families may use the Centers' facilities. Schedules of operating hours are available at the Centers.

(1) Definitions:

(a) "Student" is any person who is enrolled for three out of four terms in the academic year at the University of Oregon;

(b) "Full-time" and "part-time" student status are defined according to University regulations published in the Tuition and Fee section of the current edition of the University of Oregon General Catalog;

(c) "University employee family" is one in which at least one member of the family is on the University of Oregon payroll;

(d) "Community family" is one in which no member of the family is a University of Oregon student or an employee of the University of Oregon;

(e) "Special-needs children" are those who qualify for Early Intervention services. Those services are provided at CCDC and support services are provided to assist in meeting their special needs.

(2) Admission to the EMU Child Care and Development Centers shall be made according to a priority ranking and an admission point system. A change to non-student status for one out of four terms shall not affect access to child care.

(3) Priority ranking for admissions shall be determined as follows:

(a) First admission priority shall be assigned to student families to be ranked according to total number of points (see section (4) of this rule);

(b) Second admission priority shall be assigned to University of Oregon employee families according to total number of points;

(c) Third admission priority shall be assigned to "community families" according to total number of points;

(d) First priority within all categories in subsections (a), (b), and (c) of this section shall be assigned to those who are returning according to seniority; second priority shall be assigned to new families.

ADMINISTRATIVE RULES

(4) The admissions point system shall be based on the following scale and applied to student, employee, and community families when needed to establish ranking within these categories. The total number of points to establish seniority shall be calculated as follows:

(a) 1 point — For each consecutive term one or more children of a family have been enrolled in CCDC;

(b) 5 points — Full-time student;

(c) 3 points — Part-time student;

(d) 2 points — Student at another university or college or full-time worker;

(e) 1 point — Part-time worker, including student employment or GTF;

(f) Only one parent per family is eligible for the points listed in subsections (b) through (e) of this section.

(5) When two or more families within the same priority rank qualify for the same number of points, admission eligibility will be determined as follows:

(a) First: Returning families have priority over new families;

(b) Second: Families in which all parents are students;

(c) Third: Families in which non-students are full-time University employees;

(d) Fourth: Families who had previously applied and been unable to gain admission into CCDC.

(6) Families shall not lose seniority points for an absence of one term during the year, for a University of Oregon-granted leave of absence, or for an approved employee leave. Leave of absence is defined in the University of Oregon General Catalog under the heading "On Leave Status."

(7) Special-Needs Children:

(a) Four primary spaces at the on-campus site will be set aside for qualified special-needs children;

(b) Up to four spaces at the Westmoreland site may be set aside for qualified special-needs children.

(c) Priority for admittance to these spaces within this category shall be subject to the enrollment provisions established in sections (2) through (5) of this rule.

(8) Duration of Care:

(a) Child care will be maintained for families, throughout the academic year, once the child is enrolled.

(b) If any child of a University employee or community family is admitted to the program for Fall, Winter, or Spring Term, that family's enrollment space shall continue until their child enrolls in kindergarten. Such children will constitute no more than 20% of CCDC's population.

(c) If space is available, any currently enrolled child who reaches kindergarten age will be offered continuing after-school care without regard to the parents' University of Oregon affiliation or the 20% limit set forth in section (8)(b). A child not currently enrolled who has reached kindergarten age may be offered space, if any is available, in accordance with sections (2) through (5) of this rule.

(9) Applications for Summer, Winter, and Spring terms will be accepted during the University's regular Duck Web registration period for those respective terms. Priorities shall be established no later than two weeks after the final day of registration. Applications received after this time shall be processed on a space-available basis.

(10) Fall Term applications shall be accepted during the scheduled Duck Web registration period for Fall Term. Priorities shall be established no later than four weeks after the final day of Duck Web registration. Applications received after this time shall be processed on a space available basis.

(11) Depending on annual Incidental Fee Committee allocations, subsidies to assist student families to meet CCDC's costs may be available. Application forms are available from the ASUO office. Subsidies are allocated on a sliding scale basis according to financial need.

(12) Fees for child care to the EMU Child Care and Development Centers are published annually pursuant to OAR 571-060-0005. A copy of current fee schedules is available at the ASUO office.

(13) Persons with complaints about admission procedures, fees, or other administrative problems must:

(a) First submit a written complaint to the EMU Child Care Coordinator;

(b) If a problem is not resolved, persons with such complaints may then appeal to CCDC's Parent Council;

(c) The final appeal within this process may be presented to the Erb Memorial Union Board of Directors;

(d) If the complaint is not resolved through the process outlined in subsections (a)-(c) of this section, the complaint may be filed as a grievance under the University's Grievance Procedures in OAR 571-003-0000, et seq.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.070

Hist: UOO 6-1981, f. & cert. ef. 6-8-81; UOO 11-1981(Temp), f. & cert. ef. 7-23-81; UOO 18-1981, f. & cert. ef. 12-28-81; UOO 5-1984(Temp), f. & cert. ef. 9-18-84; UOO 7-1984, f. & cert. ef. 11-29-84; UOO 6-1986(Temp), f. & cert. ef. 12-11-86; UOO 2-1987, f. & cert. ef. 4-21-87; UOO 9-1990, f. & cert. ef. 11-6-90; UOO 11-1991(Temp), f. & cert. ef. 9-16-91; UOO 2-1992, f. 5-14-92, cert. ef. 6-15-92; UOO 2-1995, f. & cert. ef. 2-6-95; UOO 8-1997, f. & cert. ef. 6-25-1997; UO 4-2004, f. 7-15-04, cert. ef. 7-19-04

Oregon Youth Authority Chapter 416

Adm. Order No.: OYA 7-2004

Filed with Sec. of State: 7-8-2004

Certified to be Effective: 7-8-04

Notice Publication Date: 5-1-04

Rules Adopted: 416-001-0015, 416-001-0020

Rules Amended: 416-001-0000, 416-001-0005

Subject: These rules are adopted and amended to: (1) Update the list of organizations receiving notice to reflect current agency and organization changes; (2) Update the agency's adoption of the January 15, 2004 Attorney General's Model Rules of Procedure; and (3) Require 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 government unit.

Rules Coordinator: Kimberly Walker—(503) 378-3864

416-001-0000

Notice Rule for Rule Making

Prior to adoption, amendment, or repeal of a permanent rule, the OYA will 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 persons on the OYA mailing list at least 28 days prior to the effective date;

(3) By mailing a copy of the notice to designated legislators at least 49 days prior to the effective date of the rule; and

(4) By mailing a copy of the notice to the following persons, organizations or publications at least 28 days prior to the effective date:

(a) Associated Press.

(b) The Oregonian, Portland, Oregon.

(c) East Oregonian, Pendleton, Oregon.

(d) Statesman Journal, Salem, Oregon.

(e) Mail Tribune, Medford, Oregon.

(f) The Register Guard, Eugene, Oregon.

(g) The Bulletin, Bend, Oregon.

(h) American Civil Liberties Union.

(i) Association of Oregon Counties.

(j) Crime Victims United.

(k) Oregon Commission on Children and Families.

(l) Oregon Department of Human Services, Children, Adults and Families Division.

(m) Juvenile Rights Project.

(n) Oregon Sheriffs' Association.

(o) Police Chiefs' Association.

(p) Oregon Adolescent Sex Offender Treatment Network.

(q) Juvenile court judges.

(r) NE Rescue Plan Action Committee.

(s) County juvenile departments.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 183.335, 183.341, 183.360

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 2-2003, f. & cert. ef. 8-20-03; OYA 7-2004, f. & cert. ef. 7-8-04

416-001-0005

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the OYA adopts the January 15, 2004, Attorney General's Uniform and Model Rules of Procedure.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 183.335, 183.341

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 6-2000, f. & cert. ef. 8-2-00; OYA 2-2003, f. & cert. ef. 8-20-03; OYA 7-2004, f. & cert. ef. 7-8-04

ADMINISTRATIVE RULES

416-001-0015 Mailing List Fees

(1) Any individual, organization representing more than ten individuals, or agency may request to be included on the OYA's mailing list for notification of any proposed adoption, amendment, or repeal of any OYA rule. The subscription fee to be on the mailing list is \$35 annually. The fee established under this rule does not apply to any federal, state, county, or local government entity. Mailings are created for interested persons who want to receive notice of administrative rules promulgated by the OYA. The request must be sent to the Oregon Youth Authority, Rules/Policy Coordinator, 530 Center St. NE Ste. 200, Salem, OR 97301.

(2) Mailing List Subscription Renewal: One annual billing will be sent in July of each year. Subscription fees must be paid by September 1 of each year. Government agencies or entities will be sent a confirmation notice and an opportunity to renew their subscription. Anyone not requesting renewal of subscription will be removed at the end of October.

Stat. Auth.: ORS 183.335, 183.341
Stats. Implemented: ORS 183.335, 183.341
Hist.: OYA 7-2004, f. & cert. ef. 7-8-04

416-001-0020 Copies of OYA Permanent and Temporary Rules, and Fees

Individuals or organizations requesting copies of the OYA's permanent or temporary rules that are not on the OYA's mailing list will be required to prepay to the agency a fee of \$.50 per page in accordance with the OYA's policy on Public Information Requests. Requests for copies of OYA temporary or permanently adopted rules must be in writing and directed to the Rules/Policy Coordinator, Oregon Youth Authority, 530 Center Street NE Ste. 200, Salem, OR 97301.

Stat. Auth.: ORS 183.335, 183.341
Stats. Implemented: ORS 183.335, 183.341
Hist.: OYA 7-2004, f. & cert. ef. 7-8-04

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Racing Commission
Chapter 462

Adm. Order No.: RC 3-2004

Filed with Sec. of State: 6-23-2004

Certified to be Effective: 7-1-04

Notice Publication Date: 5-1-04

Rules Amended: 462-220-0040

Subject: Amends the sunset provision in Subsection 2 of the rule to June 30, 2005.

Rules Coordinator: Carol N. Morgan—(503) 731-4052

462-220-0040 State of Oregon Share of the Pari-Mutuel Handle

The operator of a hub in addition to the licensing fee set forth in OAR 462-220-0030(5) shall pay to the Oregon Racing Commission each week the following percentages of the total receipts recorded by the hub's totalizer system the preceding week.

(1) For those wagers that are merged with the mutuel pools at the race track where the race is being run live .25%.

(2) Notwithstanding subsection (1) of this rule, the Oregon Racing Commission may authorize the operator of a hub to pay less than .25% of the total receipts of those wagers made by residents of a state where qualified out-of-state hubs are specifically authorized and accept wagers from residents of that state, and the percentage of the total receipt paid by the hubs located in that state is less than .25%. This provision shall sunset on June 30, 2004 June 30, 2005, unless re-adopted by the commission.

(3) For those wagers that are not merged with the mutuel pools at the race track that the race is being run live 1%.

Stat. Auth.: ORS 462.270(3) & ORS 462.725
Stats. Implemented: ORS 462.725
Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 1-2001, f. & cert. ef. 3-19-01; RC 4-2002, f. & cert. ef. 6-28-02; RC 3-2003, f. 6-13-03, cert. ef. 7-1-03; RC 4-2003, f. 6-20-03, cert. ef. 7-1-03; RC 3-2004, f. 6-23-04, cert. ef. 7-1-04

Veterinary Medical Examining Board Chapter 875

Adm. Order No.: VMEB 3-2004

Filed with Sec. of State: 7-13-2004

Certified to be Effective: 7-13-04

Notice Publication Date: 6-1-04

Rules Amended: 875-010-0075

Subject: This amendment was made to allow applicants for the North American Licensing Examination (NAVLE) to apply directly to the testing agency (National Board of Veterinary Medical Examiners) instead of applying through the Board, consistent with the process nationwide. This amendment also increases the Board's ability to license graduates of foreign veterinary colleges by allowing Board approval of applicants who have completed equivalency programs in addition to Education Commission on Foreign Veterinary Graduates (ECFVG).

Rules Coordinator: Lori V. Makinen—(503) 731-4051

875-010-0075

General Information

(1) To apply for a veterinary license, the applicant must complete the Veterinary License or Intern Permit Application available from the Board office. A completed application includes:

(a) An application form completed and signed by the applicant and a notary public;

(b) A copy of a college diploma or a letter from the graduate's school verifying satisfactory graduation, or, if a graduate of an unaccredited foreign veterinary school certification of satisfactory completion of requirements of the Educational Commission for Foreign Veterinary Graduates (ECFVG), or verification of completion of other foreign graduate equivalency programs approved by the Board;

(c) A completed Oregon Juris Prudence Examination;

(d) Verification of veterinary experience and certification of status of license(s) in other states if applicable;

(e) The license application and jurisprudence exam fee of \$75.00.

(2) To register for the NAVLE, the candidate shall submit the Oregon application form and non-refundable application fee of \$50.00 no later than 95 days prior to the exam date. The NAVLE registration fee shall be paid directly to the National Board of Veterinary Medical Examiners (NBVME).

(3) The applicant may take the NAVLE in another state. For licensing in Oregon, NAVLE scores must be directly transferred to the Board through the Veterinary Information Verifying Agency (VIVA).

(4) An applicant may request a waiver of the Clinical Competency Test requirement if all the following conditions are met:

(a) The applicant has graduated from an accredited veterinary school or earned the ECFVG certificate, as defined in OAR 875-010-0030, prior to and including 1990;

(b) Has been engaged in active veterinary clinical practice for at least five contiguous years immediately preceding the date of application;

(c) Has held license(s) in good standing in other state(s) or province(s) since graduation; and

(d) Has met continuing education requirements at least equivalent to 10 hours per year during the five years immediately preceding the date of application.

(e) The Board may request other documentation of competent clinical practice.

(5) Neither NAVLE nor the National Board Exam (NBE) requirement shall be waived.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.075 & 686.255
Hist.: VME 1-1987, f. & ef. 12-22-87; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 3-1991, f. & cert. ef. 12-9-91; VME 2-1992, f. & cert. ef. 10-14-92 (and corrected 10-9-92); VME 1-1995, f. & cert. ef. 10-27-95; VMEB 3-2000, f. & cert. ef. 6-21-00; VMEB 3-2004, f. & cert. ef. 7-13-04

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101-006-0020	7-2-04	Amend	8-1-04	101-040-0080	7-2-04	Amend	8-1-04
101-010-0005	12-4-03	Amend	1-1-04	101-050-0005	7-2-04	Amend	8-1-04
101-010-0005	7-2-04	Amend	8-1-04	101-050-0010	12-4-03	Amend	1-1-04
101-015-0005	7-2-04	Amend	8-1-04	101-050-0010	7-2-04	Amend	8-1-04
101-015-0010	7-2-04	Adopt	8-1-04	101-050-0015	12-4-03	Amend	1-1-04
101-020-0005	7-2-04	Amend	8-1-04	101-050-0015	7-2-04	Amend	8-1-04
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101-020-0010	7-2-04	Amend	8-1-04	101-050-0025	12-4-03	Amend	1-1-04
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101-020-0018	7-2-04	Amend	8-1-04	101-060-0010	7-2-04	Amend	8-1-04
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105-040-0050	3-15-04	Amend	4-1-04	123-027-0060	2-3-04	Amend(T)	3-1-04
121-040-0010	12-24-03	Amend	2-1-04	123-027-0070	2-3-04	Amend(T)	3-1-04
122-040-0040	12-30-03	Adopt	2-1-04	123-027-0080	2-3-04	Suspend	3-1-04
122-040-0050	12-30-03	Adopt	2-1-04	123-027-0105	2-3-04	Adopt(T)	3-1-04
122-040-0060	12-30-03	Adopt	2-1-04	123-027-0155	2-3-04	Adopt(T)	3-1-04
122-070-0000	12-4-03	Amend	1-1-04	123-027-0160	2-3-04	Adopt(T)	3-1-04
122-070-0010	12-4-03	Amend	1-1-04	123-027-0165	2-3-04	Adopt(T)	3-1-04
122-070-0030	12-4-03	Amend	1-1-04	123-027-0170	2-3-04	Adopt(T)	3-1-04
122-070-0060	12-4-03	Amend	1-1-04	123-027-0200	2-3-04	Adopt(T)	3-1-04
122-070-0065	12-4-03	Adopt	1-1-04	123-027-0210	2-3-04	Adopt(T)	3-1-04
122-070-0070	12-4-03	Amend	1-1-04	123-030-0004	2-3-04	Amend(T)	3-1-04
122-070-0080	12-4-03	Amend	1-1-04	123-030-0010	2-3-04	Amend(T)	3-1-04
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123-006-0005	6-15-04	Amend(T)	7-1-04	123-030-0030	2-3-04	Amend(T)	3-1-04
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123-006-0015	6-15-04	Amend(T)	7-1-04	123-035-0000	2-3-04	Adopt(T)	3-1-04
123-006-0020	6-15-04	Amend(T)	7-1-04	123-035-0005	2-3-04	Adopt(T)	3-1-04
123-006-0025	6-15-04	Amend(T)	7-1-04	123-035-0010	2-3-04	Adopt(T)	3-1-04
123-006-0041	12-23-03	Adopt(T)	2-1-04	123-042-0010	2-3-04	Amend(T)	3-1-04
123-006-0051	12-23-03	Adopt(T)	2-1-04	123-042-0020	2-3-04	Amend(T)	3-1-04
123-020-0000	2-21-04	Adopt(T)	3-1-04	123-042-0030	2-3-04	Amend(T)	3-1-04
123-020-0005	2-21-04	Amend(T)	3-1-04	123-042-0040	2-3-04	Amend(T)	3-1-04
123-020-0010	2-21-04	Amend(T)	3-1-04	123-042-0050	2-3-04	Suspend	3-1-04
123-020-0015	2-21-04	Amend(T)	3-1-04	123-042-0060	2-3-04	Suspend	3-1-04
123-020-0020	2-21-04	Amend(T)	3-1-04	123-042-0070	2-3-04	Amend(T)	3-1-04
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123-020-0030	2-21-04	Amend(T)	3-1-04	123-042-0080	2-3-04	Amend(T)	3-1-04
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123-020-0040	2-21-04	Amend(T)	3-1-04	123-042-0150	2-3-04	Amend(T)	3-1-04
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123-023-0251	5-24-04	Repeal	7-1-04	123-042-0180	2-3-04	Amend(T)	3-1-04
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123-023-0401	5-24-04	Am. & Ren.	7-1-04	123-043-0045	3-22-04	Amend	5-1-04
123-023-0451	5-24-04	Am. & Ren.	7-1-04	123-043-0055	3-22-04	Amend	5-1-04
123-023-0501	5-24-04	Am. & Ren.	7-1-04	123-043-0075	3-22-04	Amend	5-1-04
123-023-0551	5-24-04	Am. & Ren.	7-1-04	123-049-0005	2-3-04	Amend	3-1-04
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123-055-0525	2-3-04	Amend(T)	3-1-04	137-003-0555	1-1-04	Amend	1-1-04
123-055-0600	2-3-04	Amend(T)	3-1-04	137-003-0560	1-1-04	Amend	1-1-04
123-055-0620	2-3-04	Amend(T)	3-1-04	137-003-0565	1-1-04	Amend	1-1-04
123-055-0900	2-3-04	Amend(T)	3-1-04	137-003-0570	1-1-04	Amend	1-1-04
123-057-0110	2-3-04	Amend(T)	3-1-04	137-003-0572	1-1-04	Amend	1-1-04
123-057-0130	2-3-04	Amend(T)	3-1-04	137-003-0573	1-1-04	Amend	1-1-04
123-057-0170	2-3-04	Amend(T)	3-1-04	137-003-0575	1-1-04	Amend	1-1-04
123-057-0190	2-3-04	Amend(T)	3-1-04	137-003-0580	1-1-04	Amend	1-1-04
123-057-0210	2-3-04	Amend(T)	3-1-04	137-003-0585	1-1-04	Amend	1-1-04
123-057-0230	2-3-04	Amend(T)	3-1-04	137-003-0590	1-1-04	Amend	1-1-04
123-057-0310	2-3-04	Amend(T)	3-1-04	137-003-0595	1-1-04	Amend	1-1-04
123-057-0330	2-3-04	Amend(T)	3-1-04	137-003-0600	1-1-04	Amend	1-1-04
123-057-0350	2-3-04	Amend(T)	3-1-04	137-003-0605	1-1-04	Amend	1-1-04
123-057-0410	2-3-04	Amend(T)	3-1-04	137-003-0610	1-1-04	Amend	1-1-04
123-057-0430	2-3-04	Amend(T)	3-1-04	137-003-0615	1-1-04	Amend	1-1-04
123-057-0450	2-3-04	Amend(T)	3-1-04	137-003-0625	1-1-04	Amend	1-1-04
123-057-0470	2-3-04	Amend(T)	3-1-04	137-003-0630	1-1-04	Amend	1-1-04
123-057-0510	2-3-04	Amend(T)	3-1-04	137-003-0635	1-1-04	Amend	1-1-04
123-057-0530	2-3-04	Amend(T)	3-1-04	137-003-0640	1-1-04	Amend	1-1-04
123-057-0710	2-3-04	Amend(T)	3-1-04	137-003-0645	1-1-04	Amend	1-1-04
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123-068-0105	12-15-03	Adopt(T)	1-1-04	137-003-0655	1-1-04	Amend	1-1-04
123-068-0205	12-15-03	Adopt(T)	1-1-04	137-003-0660	1-1-04	Amend	1-1-04
123-068-0305	12-15-03	Adopt(T)	1-1-04	137-003-0665	1-1-04	Amend	1-1-04
125-020-0610	3-26-04	Amend	5-1-04	137-003-0670	1-1-04	Amend	1-1-04
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125-125-0350	3-5-04	Adopt(T)	4-1-04	137-025-0160	4-1-04	Amend	4-1-04
125-125-0350	9-1-04	Adopt	8-1-04	137-025-0160	5-19-04	Amend	7-1-04
125-125-0400	3-5-04	Adopt(T)	4-1-04	137-025-0180	4-1-04	Amend	4-1-04
125-125-0400	9-1-04	Adopt	8-1-04	137-025-0180	5-19-04	Amend	7-1-04
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137-003-0000	1-1-04	Amend	1-1-04	137-025-0186	5-19-04	Adopt	7-1-04
137-003-0501	1-1-04	Amend	1-1-04	137-025-0188	5-19-04	Adopt	7-1-04
137-003-0510	1-1-04	Amend	1-1-04	137-025-0189	5-19-04	Adopt	7-1-04
137-003-0515	1-1-04	Amend	1-1-04	137-040-0017	1-2-04	Amend	2-1-04
137-003-0520	1-1-04	Amend	1-1-04	137-040-0500	1-2-04	Amend	2-1-04
137-003-0525	1-1-04	Amend	1-1-04	137-040-0510	1-2-04	Amend	2-1-04
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137-003-0530	1-1-04	Amend	1-1-04	137-040-0550	1-2-04	Amend	2-1-04
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137-045-0030	12-9-03	Amend	1-1-04	137-055-5110	1-5-04	Amend	2-1-04
137-045-0035	12-9-03	Amend	1-1-04	137-055-5110	7-1-04	Amend	8-1-04
137-045-0050	12-9-03	Amend	1-1-04	137-055-5220	1-5-04	Amend	2-1-04
137-045-0055	12-9-03	Adopt	1-1-04	137-055-5510	1-5-04	Adopt	2-1-04
137-045-0060	12-9-03	Amend	1-1-04	137-055-5510	7-1-04	Amend	8-1-04
137-045-0070	12-9-03	Amend	1-1-04	137-055-6020	1-5-04	Amend	2-1-04
137-045-0080	12-9-03	Amend	1-1-04	137-055-6020	7-1-04	Amend	8-1-04
137-045-0090	12-9-03	Amend	1-1-04	137-055-6025	1-5-04	Amend	2-1-04
137-055-1020	1-5-04	Amend	2-1-04	137-055-6110	1-5-04	Amend	2-1-04
137-055-1070	7-1-04	Amend	8-1-04	137-055-6210	7-1-04	Adopt	8-1-04
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137-055-1160	1-5-04	Amend	2-1-04	137-055-7180	7-1-04	Amend	8-1-04
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137-055-2140	4-1-04	Amend	5-1-04	137-060-0015	2-11-04	Repeal	3-1-04
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137-055-3480	4-1-04	Amend	5-1-04	137-060-0031	2-11-04	Repeal	3-1-04
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137-055-4180	1-5-04	Amend	2-1-04	137-060-0110	2-11-04	Adopt	3-1-04
137-055-4200	1-5-04	Repeal	2-1-04	137-060-0120	2-11-04	Adopt	3-1-04
137-055-4220	1-5-04	Repeal	2-1-04	137-060-0130	2-11-04	Adopt	3-1-04
137-055-4240	1-5-04	Repeal	2-1-04	137-060-0140	2-11-04	Adopt	3-1-04
137-055-4260	1-5-04	Repeal	2-1-04	137-060-0150	2-11-04	Adopt	3-1-04
137-055-4280	1-5-04	Repeal	2-1-04	137-060-0160	2-11-04	Adopt	3-1-04
137-055-4440	1-5-04	Amend	2-1-04	137-060-0200	2-11-04	Adopt	3-1-04
137-055-4450	1-5-04	Adopt	2-1-04	137-060-0210	2-11-04	Adopt	3-1-04
137-055-4520	1-5-04	Amend	2-1-04	137-060-0220	2-11-04	Adopt	3-1-04
137-055-5020	1-5-04	Amend	2-1-04	137-060-0230	2-11-04	Adopt	3-1-04
137-055-5025	1-5-04	Adopt	2-1-04	137-060-0240	2-11-04	Adopt	3-1-04
137-055-5030	7-1-04	Adopt	8-1-04	137-060-0250	2-11-04	Adopt	3-1-04
137-055-5040	1-5-04	Amend	2-1-04	137-060-0260	2-11-04	Adopt	3-1-04

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137-060-0310	2-11-04	Adopt	3-1-04	141-035-0050	1-1-04	Amend	1-1-04
137-060-0320	2-11-04	Adopt	3-1-04	141-035-0055	1-1-04	Amend	1-1-04
137-060-0330	2-11-04	Adopt	3-1-04	141-035-0060	1-1-04	Amend	1-1-04
137-060-0340	2-11-04	Adopt	3-1-04	141-035-0065	1-1-04	Amend	1-1-04
137-060-0350	2-11-04	Adopt	3-1-04	141-035-0068	1-1-04	Adopt	1-1-04
137-060-0360	2-11-04	Adopt	3-1-04	141-035-0070	1-1-04	Amend	1-1-04
137-060-0400	2-11-04	Adopt	3-1-04	141-035-0075	1-1-04	Adopt	1-1-04
137-060-0410	2-11-04	Adopt	3-1-04	141-040-0005	1-1-04	Amend	1-1-04
137-060-0420	2-11-04	Adopt	3-1-04	141-040-0010	1-1-04	Amend	1-1-04
137-060-0430	2-11-04	Adopt	3-1-04	141-040-0020	1-1-04	Amend	1-1-04
137-060-0440	2-11-04	Adopt	3-1-04	141-040-0030	1-1-04	Amend	1-1-04
137-060-0450	2-11-04	Adopt	3-1-04	141-040-0035	1-1-04	Amend	1-1-04
137-084-0001	1-29-04	Adopt	3-1-04	141-040-0040	1-1-04	Amend	1-1-04
137-084-0005	1-29-04	Adopt	3-1-04	141-040-0200	1-1-04	Amend	1-1-04
137-084-0010	1-29-04	Adopt	3-1-04	141-040-0211	1-1-04	Amend	1-1-04
137-084-0020	1-29-04	Adopt	3-1-04	141-040-0212	1-1-04	Amend	1-1-04
137-084-0030	1-29-04	Adopt	3-1-04	141-040-0214	1-1-04	Amend	1-1-04
137-085-0001	2-1-04	Adopt(T)	3-1-04	141-040-0220	1-1-04	Amend	1-1-04
137-085-0010	2-1-04	Adopt(T)	3-1-04	141-045-0005	1-1-04	Amend	1-1-04
137-085-0020	2-1-04	Adopt(T)	3-1-04	141-045-0010	1-1-04	Amend	1-1-04
137-085-0030	2-1-04	Adopt(T)	3-1-04	141-045-0015	1-1-04	Amend	1-1-04
137-085-0040	2-1-04	Adopt(T)	3-1-04	141-045-0021	1-1-04	Amend	1-1-04
137-085-0050	2-1-04	Adopt(T)	3-1-04	141-045-0031	1-1-04	Amend	1-1-04
137-105-0001	5-25-04	Adopt	7-1-04	141-045-0041	1-1-04	Amend	1-1-04
137-105-0010	5-25-04	Adopt	7-1-04	141-045-0061	1-1-04	Amend	1-1-04
137-105-0020	5-25-04	Adopt	7-1-04	141-045-0100	1-1-04	Amend	1-1-04
137-105-0030	5-25-04	Adopt	7-1-04	141-045-0105	1-1-04	Amend	1-1-04
137-105-0040	5-25-04	Adopt	7-1-04	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
141-030-0038	1-1-04	Repeal	1-1-04	141-045-0126	1-1-04	Amend	1-1-04
141-030-0039	1-1-04	Am. & Ren.	1-1-04	141-045-0130	1-1-04	Amend	1-1-04
141-030-0039	1-1-04	Amend	1-1-04	141-045-0150	1-1-04	Amend	1-1-04
141-030-0040	1-1-04	Renumber	1-1-04	141-045-0155	1-1-04	Amend	1-1-04
141-030-0045	1-1-04	Adopt	1-1-04	141-045-0160	1-1-04	Amend	1-1-04
141-035-0005	1-1-04	Amend	1-1-04	141-045-0170	1-1-04	Amend	1-1-04
141-035-0010	1-1-04	Repeal	1-1-04	141-045-0170	1-1-04	Amend	1-1-04
141-035-0011	1-1-04	Adopt	1-1-04	141-045-0180	1-1-04	Amend	1-1-04
141-035-0012	1-1-04	Adopt	1-1-04	141-045-0185	1-1-04	Amend	1-1-04
141-035-0013	1-1-04	Amend	1-1-04	141-084-0010	6-11-04	Repeal	7-1-04
141-035-0015	1-1-04	Amend	1-1-04	141-084-0020	6-11-04	Repeal	7-1-04
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141-035-0045	1-1-04	Amend	1-1-04	141-084-0100	6-11-04	Repeal	7-1-04
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141-085-0018	5-21-04	Amend	7-1-04	141-085-0262	5-21-04	Amend	7-1-04
141-085-0020	5-21-04	Amend	7-1-04	141-085-0263	11-26-03	Amend	1-1-04
141-085-0022	5-21-04	Amend	7-1-04	141-085-0263	5-21-04	Amend	7-1-04
141-085-0023	5-21-04	Adopt	7-1-04	141-085-0264	5-21-04	Amend	7-1-04
141-085-0024	5-21-04	Amend	7-1-04	141-085-0266	5-21-04	Amend	7-1-04
141-085-0025	5-21-04	Amend	7-1-04	141-085-0400	5-21-04	Amend	7-1-04
141-085-0027	11-26-03	Amend	1-1-04	141-085-0406	5-21-04	Amend	7-1-04
141-085-0027	5-21-04	Amend	7-1-04	141-085-0410	11-26-03	Amend	1-1-04
141-085-0028	11-26-03	Amend	1-1-04	141-085-0410	5-21-04	Amend	7-1-04
141-085-0028	5-21-04	Amend	7-1-04	141-085-0421	11-26-03	Amend	1-1-04
141-085-0029	11-26-03	Amend	1-1-04	141-085-0421	5-21-04	Amend	7-1-04
141-085-0029	5-21-04	Amend	7-1-04	141-085-0425	5-21-04	Amend	7-1-04
141-085-0031	5-21-04	Amend	7-1-04	141-085-0430	11-26-03	Amend	1-1-04
141-085-0034	5-21-04	Amend	7-1-04	141-085-0430	5-21-04	Amend	7-1-04
141-085-0036	5-21-04	Amend	7-1-04	141-085-0436	5-21-04	Amend	7-1-04
141-085-0064	5-21-04	Amend	7-1-04	141-085-0440	5-21-04	Amend	7-1-04
141-085-0066	5-21-04	Amend	7-1-04	141-085-0450	11-26-03	Adopt	1-1-04
141-085-0070	5-21-04	Amend	7-1-04	141-085-0450	5-21-04	Adopt	7-1-04
141-085-0075	11-26-03	Amend	1-1-04	141-085-0640	5-21-04	Amend	7-1-04
141-085-0075	5-21-04	Amend	7-1-04	141-085-0650	5-21-04	Amend	7-1-04
141-085-0079	5-21-04	Amend	7-1-04	141-085-0660	5-21-04	Amend	7-1-04
141-085-0080	5-21-04	Amend	7-1-04	141-088-0000	6-11-04	Amend	7-1-04
141-085-0085	5-21-04	Amend	7-1-04	141-088-0010	6-11-04	Amend	7-1-04
141-085-0090	5-21-04	Amend	7-1-04	141-088-0020	6-11-04	Amend	7-1-04
141-085-0095	5-21-04	Amend	7-1-04	141-088-0035	6-11-04	Adopt	7-1-04
141-085-0096	11-26-03	Amend	1-1-04	141-088-0040	6-11-04	Adopt	7-1-04
141-085-0096	5-21-04	Amend	7-1-04	141-088-0050	6-11-04	Adopt	7-1-04
141-085-0115	11-26-03	Amend	1-1-04	141-088-0060	6-11-04	Adopt	7-1-04
141-085-0115	5-21-04	Amend	7-1-04	141-088-0070	6-11-04	Adopt	7-1-04
141-085-0121	11-26-03	Amend	1-1-04	141-088-0080	6-11-04	Adopt	7-1-04
141-085-0121	5-21-04	Amend	7-1-04	141-088-0090	6-11-04	Adopt	7-1-04
141-085-0126	11-26-03	Amend	1-1-04	141-088-0100	6-11-04	Adopt	7-1-04
141-085-0126	5-21-04	Amend	7-1-04	141-088-0110	6-11-04	Adopt	7-1-04
141-085-0131	11-26-03	Amend	1-1-04	141-088-0120	6-11-04	Adopt	7-1-04
141-085-0131	5-21-04	Amend	7-1-04	141-088-0130	6-11-04	Adopt	7-1-04
141-085-0136	5-21-04	Amend	7-1-04	141-088-0140	6-11-04	Adopt	7-1-04
141-085-0141	11-26-03	Amend	1-1-04	141-088-0150	6-11-04	Adopt	7-1-04
141-085-0141	5-21-04	Amend	7-1-04	141-088-0160	6-11-04	Adopt	7-1-04
141-085-0146	11-26-03	Amend	1-1-04	141-088-0170	6-11-04	Adopt	7-1-04
141-085-0146	5-21-04	Amend	7-1-04	141-088-0180	6-11-04	Adopt	7-1-04
141-085-0151	11-26-03	Amend	1-1-04	141-089-0100	5-21-04	Amend	7-1-04
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141-085-0156	11-26-03	Amend	1-1-04	141-089-0110	5-21-04	Amend	7-1-04
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141-085-0161	11-26-03	Amend	1-1-04	141-089-0120	5-21-04	Amend	7-1-04
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141-085-0166	5-21-04	Amend	7-1-04	141-089-0135	5-21-04	Amend	7-1-04
141-085-0171	5-21-04	Amend	7-1-04	141-089-0140	5-21-04	Amend	7-1-04
141-085-0176	11-26-03	Amend	1-1-04	141-089-0145	5-21-04	Amend	7-1-04
141-085-0176	5-21-04	Amend	7-1-04	141-089-0150	5-21-04	Amend	7-1-04
141-085-0240	5-21-04	Amend	7-1-04	141-089-0155	5-21-04	Amend	7-1-04
141-085-0244	5-21-04	Amend	7-1-04	141-089-0165	5-21-04	Amend	7-1-04
141-085-0248	5-21-04	Amend	7-1-04	141-089-0170	5-21-04	Amend	7-1-04
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141-089-0185	5-21-04	Amend	7-1-04	141-090-0040	5-21-04	Amend	7-1-04
141-089-0190	5-21-04	Amend	7-1-04	141-090-0045	5-21-04	Amend	7-1-04
141-089-0200	5-21-04	Amend	7-1-04	141-090-0050	5-21-04	Amend	7-1-04
141-089-0205	5-21-04	Amend	7-1-04	141-090-0055	5-21-04	Amend	7-1-04
141-089-0210	5-21-04	Amend	7-1-04	141-102-0000	5-21-04	Amend	7-1-04
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141-089-0225	5-21-04	Amend	7-1-04	141-102-0020	5-21-04	Amend	7-1-04
141-089-0230	5-21-04	Amend	7-1-04	141-102-0030	5-21-04	Amend	7-1-04
141-089-0240	5-21-04	Amend	7-1-04	141-102-0040	5-21-04	Amend	7-1-04
141-089-0245	5-21-04	Amend	7-1-04	141-102-0045	5-21-04	Amend	7-1-04
141-089-0250	5-21-04	Amend	7-1-04	150-118.010(2)	5-1-04	Adopt(T)	6-1-04
141-089-0255	5-21-04	Amend	7-1-04	150-118.010(7)	5-1-04	Adopt(T)	6-1-04
141-089-0260	5-21-04	Amend	7-1-04	150-180.455	4-1-04	Adopt(T)	5-1-04
141-089-0265	5-21-04	Amend	7-1-04	150-294.175(2)-(A)	12-31-03	Adopt	2-1-04
141-089-0275	5-21-04	Amend	7-1-04	150-294.175(2)-(B)	12-31-03	Adopt	2-1-04
141-089-0280	5-21-04	Amend	7-1-04	150-294.187	12-31-03	Amend	2-1-04
141-089-0285	5-21-04	Amend	7-1-04	150-294.211(26)	12-31-03	Renumber	2-1-04
141-089-0290	5-21-04	Amend	7-1-04	150-294.435(1)-(C)	12-31-03	Adopt	2-1-04
141-089-0295	5-21-04	Amend	7-1-04	150-305.220(1)	12-31-03	Amend	2-1-04
141-089-0300	5-21-04	Amend	7-1-04	150-305.220(2)	12-31-03	Amend	2-1-04
141-089-0310	5-21-04	Amend	7-1-04	150-306.115	12-31-03	Amend	2-1-04
141-089-0400	5-21-04	Amend	7-1-04	150-308.156(5)-(B)	12-31-03	Amend	2-1-04
141-089-0405	5-21-04	Amend	7-1-04	150-308.159	12-31-03	Adopt	2-1-04
141-089-0410	5-21-04	Amend	7-1-04	150-308.219	12-31-03	Amend	2-1-04
141-089-0415	5-21-04	Amend	7-1-04	150-308.250	12-31-03	Amend	2-1-04
141-089-0420	5-21-04	Amend	7-1-04	150-309.100(3)-(B)	12-31-03	Amend	2-1-04
141-089-0430	5-21-04	Amend	7-1-04	150-309.100(3)-(C)	12-31-03	Amend	2-1-04
141-089-0500	5-21-04	Amend	7-1-04	150-309.110(1)-(A)	12-31-03	Amend	2-1-04
141-089-0505	5-21-04	Amend	7-1-04	150-309.110(1)-(B)	12-31-03	Amend	2-1-04
141-089-0510	5-21-04	Amend	7-1-04	150-309.110(1)-(D)	12-31-03	Adopt	2-1-04
141-089-0515	5-21-04	Amend	7-1-04	150-309.110(1)-(E)	12-31-03	Adopt	2-1-04
141-089-0520	5-21-04	Amend	7-1-04	150-309.115(1)-(C)	12-31-03	Adopt	2-1-04
141-089-0530	5-21-04	Amend	7-1-04	150-309.115(2)-(f)	12-31-03	Renumber	2-1-04
141-089-0550	5-21-04	Adopt	7-1-04	150-311.205(1)(b)	12-31-03	Renumber	2-1-04
141-089-0555	5-21-04	Adopt	7-1-04	150-311.205(1)(c)-(A)	12-31-03	Renumber	2-1-04
141-089-0560	5-21-04	Adopt	7-1-04	150-311.205(1)(c)-(C)	12-31-03	Am. & Ren.	2-1-04
141-089-0565	5-21-04	Adopt	7-1-04	150-311.672(1)(a)	12-31-03	Amend	2-1-04
141-089-0570	5-21-04	Adopt	7-1-04	150-311.708	12-31-03	Amend	2-1-04
141-089-0575	5-21-04	Adopt	7-1-04	150-311.806-(A)	12-31-03	Amend	2-1-04
141-089-0580	5-21-04	Adopt	7-1-04	150-312.040(1)(b)	12-31-03	Amend	2-1-04
141-089-0585	5-21-04	Adopt	7-1-04	150-314.295	12-31-03	Adopt	2-1-04
141-089-0590	5-21-04	Adopt	7-1-04	150-314.385(c)-(B)	12-31-03	Amend	2-1-04
141-089-0595	5-21-04	Adopt	7-1-04	150-314.415(1)(b)	12-31-03	Am. & Ren.	2-1-04
141-089-0600	5-21-04	Adopt	7-1-04	150-314.415(1)(c)	12-31-03	Am. & Ren.	2-1-04
141-089-0605	5-21-04	Adopt	7-1-04	150-314.505-(A)	12-31-03	Amend	2-1-04
141-089-0610	5-21-04	Adopt	7-1-04	150-314.610(1)-(A)	12-31-03	Amend	2-1-04
141-089-0615	5-21-04	Adopt	7-1-04	150-314.610(1)-(B)	12-31-03	Amend	2-1-04
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150-321.045	12-31-03	Amend	2-1-04	160-001-0005	5-3-04	Amend	6-1-04
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150-321.282(1)-(D)	12-31-03	Repeal	2-1-04	161-002-0000	6-1-04	Amend	7-1-04
150-321.282(1)-(E)	12-31-03	Repeal	2-1-04	161-006-0160	11-24-03	Amend	1-1-04
150-321.282(1)-(I)	12-31-03	Repeal	2-1-04	161-010-0080	6-1-04	Amend	7-1-04
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150-321.282(2)(c)	12-31-03	Repeal	2-1-04	161-020-0045	11-24-03	Amend	1-1-04
150-321.282(5)	12-31-03	Repeal	2-1-04	161-020-0055	11-24-03	Amend	1-1-04
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150-321.379(1)-(B)	12-31-03	Repeal	2-1-04	161-025-0060	2-3-04	Amend	3-1-04
150-321.379(2)-(A)	12-31-03	Repeal	2-1-04	161-050-0040	11-24-03	Amend	1-1-04
150-321.379(2)-(C)	12-31-03	Repeal	2-1-04	161-050-0050	11-24-03	Amend	1-1-04
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150-321.430(3)-(A)	12-31-03	Repeal	2-1-04	165-002-0005	12-5-03	Amend	1-1-04
150-321.430(3)-(B)	12-31-03	Repeal	2-1-04	165-002-0010	12-5-03	Amend	1-1-04
150-321.430(3)-(C)	12-31-03	Repeal	2-1-04	165-002-0025	12-5-03	Amend	1-1-04
150-321.430(3)-(D)	12-31-03	Repeal	2-1-04	165-007-0030	12-31-03	Amend	2-1-04
150-321.432-(A)	12-31-03	Amend	2-1-04	165-010-0005	12-5-03	Amend	1-1-04
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177-010-0003	5-26-04	Amend	7-1-04	213-005-0001	1-1-04	Amend	2-1-04
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177-040-0025	5-26-04	Amend	7-1-04	213-017-0003	1-1-04	Amend	2-1-04
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259-008-0011	4-23-04	Amend	6-1-04	291-062-0060	7-12-04	Repeal	8-1-04
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259-008-0060	4-23-04	Amend	6-1-04	291-062-0100	7-12-04	Adopt	8-1-04
259-008-0066	4-23-04	Amend	6-1-04	291-062-0110	1-14-04	Adopt(T)	2-1-04
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259-008-0070	4-23-04	Amend	6-1-04	291-062-0120	7-12-04	Adopt	8-1-04
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274-020-0341	4-29-04	Amend(T)	6-1-04	309-018-0130	3-1-04	Repeal	4-1-04
274-020-0341	5-11-04	Amend(T)	6-1-04	309-018-0140	3-1-04	Repeal	4-1-04
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309-049-0085	1-1-04	Repeal	2-1-04	330-090-0105	7-1-04	Amend	8-1-04
309-049-0090	1-1-04	Repeal	2-1-04	330-090-0110	1-21-04	Amend	3-1-04
309-049-0095	1-1-04	Repeal	2-1-04	330-090-0110	7-1-04	Amend	8-1-04
309-049-0100	1-1-04	Repeal	2-1-04	330-090-0120	1-21-04	Amend	3-1-04
309-049-0105	1-1-04	Repeal	2-1-04	330-090-0120	7-1-04	Amend	8-1-04
309-049-0110	1-1-04	Repeal	2-1-04	330-090-0130	1-21-04	Amend	3-1-04
309-049-0115	1-1-04	Repeal	2-1-04	330-090-0130	7-1-04	Amend	8-1-04
309-049-0120	1-1-04	Repeal	2-1-04	330-090-0135	1-21-04	Amend	3-1-04
309-049-0130	1-1-04	Repeal	2-1-04	330-090-0135	7-1-04	Amend	8-1-04
309-049-0135	1-1-04	Repeal	2-1-04	330-090-0140	1-21-04	Amend	3-1-04
309-049-0140	1-1-04	Repeal	2-1-04	330-090-0140	7-1-04	Amend	8-1-04
309-049-0145	1-1-04	Repeal	2-1-04	330-090-0150	1-21-04	Amend	3-1-04
309-049-0150	1-1-04	Repeal	2-1-04	330-090-0150	7-1-04	Amend	8-1-04
309-049-0155	1-1-04	Repeal	2-1-04	331-001-0000	2-13-04	Adopt	3-1-04
309-049-0160	1-1-04	Repeal	2-1-04	331-001-0010	2-13-04	Adopt	3-1-04
309-049-0165	1-1-04	Repeal	2-1-04	331-001-0020	2-13-04	Adopt	3-1-04
309-049-0170	1-1-04	Repeal	2-1-04	331-010-0000	2-13-04	Adopt	3-1-04
309-049-0175	1-1-04	Repeal	2-1-04	331-010-0010	2-13-04	Adopt	3-1-04
309-049-0180	1-1-04	Repeal	2-1-04	331-010-0020	2-13-04	Adopt	3-1-04
309-049-0185	1-1-04	Repeal	2-1-04	331-010-0030	2-13-04	Adopt	3-1-04
309-049-0190	1-1-04	Repeal	2-1-04	331-010-0040	2-13-04	Adopt	3-1-04
309-049-0193	1-1-04	Repeal	2-1-04	331-020-0000	2-13-04	Adopt	3-1-04
309-049-0195	1-1-04	Repeal	2-1-04	331-020-0010	2-13-04	Adopt	3-1-04
309-049-0200	1-1-04	Repeal	2-1-04	331-020-0020	2-13-04	Adopt	3-1-04
309-049-0205	1-1-04	Repeal	2-1-04	331-020-0030	2-13-04	Adopt	3-1-04
309-049-0207	1-1-04	Repeal	2-1-04	331-020-0040	2-13-04	Adopt	3-1-04
309-049-0210	1-1-04	Repeal	2-1-04	331-020-0050	2-13-04	Adopt	3-1-04
309-049-0215	1-1-04	Repeal	2-1-04	331-020-0060	2-13-04	Adopt	3-1-04
309-049-0220	1-1-04	Repeal	2-1-04	331-020-0070	2-13-04	Adopt	3-1-04
309-049-0225	1-1-04	Repeal	2-1-04	331-030-0000	2-13-04	Adopt	3-1-04
330-070-0010	1-21-04	Amend	3-1-04	331-030-0010	2-13-04	Adopt	3-1-04
330-070-0013	1-21-04	Amend	3-1-04	331-030-0020	2-13-04	Adopt	3-1-04
330-070-0014	1-21-04	Amend	3-1-04	331-030-0030	2-13-04	Adopt	3-1-04
330-070-0020	1-21-04	Amend	3-1-04	331-100-0000	7-1-04	Repeal	8-1-04
330-070-0021	1-21-04	Amend	3-1-04	331-100-0005	7-1-04	Repeal	8-1-04
330-070-0022	1-21-04	Amend	3-1-04	331-100-0020	7-1-04	Repeal	8-1-04
330-070-0024	1-21-04	Amend	3-1-04	331-100-0030	7-1-04	Repeal	8-1-04
330-070-0025	1-21-04	Amend	3-1-04	331-105-0000	7-1-04	Repeal	8-1-04
330-070-0026	1-21-04	Amend	3-1-04	331-105-0010	7-1-04	Repeal	8-1-04
330-070-0027	1-21-04	Amend	3-1-04	331-105-0020	7-1-04	Amend	8-1-04
330-070-0040	1-21-04	Amend	3-1-04	331-105-0030	7-1-04	Amend	8-1-04
330-070-0045	1-21-04	Amend	3-1-04	331-110-0005	7-1-04	Amend	8-1-04
330-070-0048	1-21-04	Amend	3-1-04	331-110-0010	7-1-04	Amend	8-1-04
330-070-0055	1-21-04	Amend	3-1-04	331-110-0055	7-1-04	Amend	8-1-04
330-070-0059	1-21-04	Adopt	3-1-04	331-115-0020	7-1-04	Amend	8-1-04
330-070-0060	1-21-04	Amend	3-1-04	331-115-0030	7-1-04	Amend	8-1-04
330-070-0062	1-21-04	Amend	3-1-04	331-115-0040	7-1-04	Repeal	8-1-04
330-070-0063	1-21-04	Amend	3-1-04	331-115-0050	7-1-04	Repeal	8-1-04
330-070-0064	1-21-04	Adopt	3-1-04	331-115-0060	7-1-04	Amend	8-1-04
330-070-0070	1-21-04	Amend	3-1-04	331-115-0070	7-1-04	Repeal	8-1-04
330-070-0073	1-21-04	Amend	3-1-04	331-120-0000	7-1-04	Amend	8-1-04
330-070-0085	1-21-04	Amend	3-1-04	331-120-0020	7-1-04	Amend	8-1-04
330-070-0089	1-21-04	Amend	3-1-04	331-120-0030	7-1-04	Amend	8-1-04
330-070-0091	1-21-04	Amend	3-1-04	331-125-0000	7-1-04	Amend	8-1-04
330-070-0097	1-21-04	Amend	3-1-04	331-125-0010	7-1-04	Amend	8-1-04

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331-130-0000	7-1-04	Repeal	8-1-04	331-405-0000	7-1-04	Repeal	8-1-04
331-130-0010	7-1-04	Repeal	8-1-04	331-405-0010	7-1-04	Repeal	8-1-04
331-130-0020	7-1-04	Repeal	8-1-04	331-405-0020	7-1-04	Amend	8-1-04
331-135-0000	7-1-04	Amend	8-1-04	331-405-0030	7-1-04	Amend	8-1-04
331-135-0010	7-1-04	Repeal	8-1-04	331-405-0040	7-1-04	Repeal	8-1-04
331-135-0020	7-1-04	Repeal	8-1-04	331-405-0050	7-1-04	Repeal	8-1-04
331-135-0030	7-1-04	Repeal	8-1-04	331-410-0000	7-1-04	Amend	8-1-04
331-200-0000	7-1-04	Repeal	8-1-04	331-410-0005	7-1-04	Repeal	8-1-04
331-200-0010	7-1-04	Repeal	8-1-04	331-410-0010	7-1-04	Amend	8-1-04
331-200-0020	7-1-04	Repeal	8-1-04	331-410-0020	7-1-04	Amend	8-1-04
331-200-0030	7-1-04	Repeal	8-1-04	331-410-0030	7-1-04	Amend	8-1-04
331-205-0000	7-1-04	Repeal	8-1-04	331-410-0040	7-1-04	Amend	8-1-04
331-205-0010	7-1-04	Repeal	8-1-04	331-410-0050	7-1-04	Amend	8-1-04
331-205-0020	7-1-04	Amend	8-1-04	331-410-0060	7-1-04	Amend	8-1-04
331-205-0030	7-1-04	Amend	8-1-04	331-410-0065	7-1-04	Amend	8-1-04
331-210-0000	7-1-04	Amend	8-1-04	331-410-0070	7-1-04	Repeal	8-1-04
331-210-0010	7-1-04	Amend	8-1-04	331-410-0080	7-1-04	Amend	8-1-04
331-210-0020	7-1-04	Amend	8-1-04	331-410-0090	7-1-04	Amend	8-1-04
331-210-0021	7-1-04	Adopt	8-1-04	331-410-0100	7-1-04	Repeal	8-1-04
331-215-0000	7-1-04	Amend	8-1-04	331-415-0000	7-1-04	Amend	8-1-04
331-215-0010	7-1-04	Amend	8-1-04	331-415-0010	7-1-04	Amend	8-1-04
331-215-0020	7-1-04	Amend	8-1-04	331-415-0020	7-1-04	Amend	8-1-04
331-215-0030	7-1-04	Amend	8-1-04	331-420-0000	7-1-04	Amend	8-1-04
331-215-0040	7-1-04	Amend	8-1-04	331-420-0020	7-1-04	Amend	8-1-04
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331-220-0000	7-1-04	Amend	8-1-04	331-425-0010	7-1-04	Amend	8-1-04
331-220-0010	7-1-04	Amend	8-1-04	331-425-0020	7-1-04	Repeal	8-1-04
331-220-0020	7-1-04	Amend	8-1-04	331-430-0000	7-1-04	Repeal	8-1-04
331-220-0030	7-1-04	Amend	8-1-04	331-430-0010	7-1-04	Repeal	8-1-04
331-220-0040	7-1-04	Amend	8-1-04	331-430-0020	7-1-04	Repeal	8-1-04
331-220-0050	7-1-04	Amend	8-1-04	331-430-0030	7-1-04	Amend	8-1-04
331-220-0060	7-1-04	Amend	8-1-04	331-500-0000	7-1-04	Repeal	8-1-04
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331-220-0080	7-1-04	Amend	8-1-04	331-500-0020	7-1-04	Repeal	8-1-04
331-225-0000	7-1-04	Amend	8-1-04	331-500-0030	7-1-04	Repeal	8-1-04
331-225-0010	7-1-04	Repeal	8-1-04	331-500-0040	7-1-04	Repeal	8-1-04
331-225-0020	7-1-04	Amend	8-1-04	331-500-0050	7-1-04	Repeal	8-1-04
331-225-0030	7-1-04	Amend	8-1-04	331-505-0000	7-1-04	Amend	8-1-04
331-225-0040	7-1-04	Amend	8-1-04	331-505-0010	7-1-04	Amend	8-1-04
331-225-0050	7-1-04	Amend	8-1-04	331-505-0020	7-1-04	Repeal	8-1-04
331-225-0060	7-1-04	Amend	8-1-04	331-505-0030	7-1-04	Repeal	8-1-04
331-225-0070	7-1-04	Amend	8-1-04	331-505-0040	7-1-04	Repeal	8-1-04
331-225-0080	7-1-04	Amend	8-1-04	331-510-0000	7-1-04	Amend	8-1-04
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331-225-0120	7-1-04	Amend	8-1-04	331-515-0030	7-1-04	Amend	8-1-04
331-225-0130	7-1-04	Amend	8-1-04	331-515-0040	7-1-04	Repeal	8-1-04
331-225-0140	7-1-04	Amend	8-1-04	331-515-0050	7-1-04	Repeal	8-1-04
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331-400-0000	7-1-04	Repeal	8-1-04	331-520-0020	7-1-04	Repeal	8-1-04
331-400-0010	7-1-04	Repeal	8-1-04	331-520-0030	7-1-04	Amend	8-1-04
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331-520-0070	7-1-04	Amend	8-1-04	331-575-0010	7-1-04	Amend	8-1-04
331-525-0000	7-1-04	Amend	8-1-04	331-575-0020	7-1-04	Amend	8-1-04
331-525-0010	7-1-04	Repeal	8-1-04	331-575-0030	7-1-04	Amend	8-1-04
331-525-0020	7-1-04	Amend	8-1-04	331-575-0040	7-1-04	Amend	8-1-04
331-525-0030	7-1-04	Repeal	8-1-04	331-580-0000	7-1-04	Amend	8-1-04
331-525-0035	7-1-04	Adopt	8-1-04	331-580-0010	7-1-04	Amend	8-1-04
331-525-0038	7-1-04	Adopt	8-1-04	331-580-0020	7-1-04	Amend	8-1-04
331-525-0040	7-1-04	Amend	8-1-04	331-580-0030	7-1-04	Amend	8-1-04
331-525-0050	7-1-04	Repeal	8-1-04	331-585-0000	7-1-04	Amend	8-1-04
331-525-0055	7-1-04	Adopt	8-1-04	331-585-0010	7-1-04	Amend	8-1-04
331-525-0060	7-1-04	Adopt	8-1-04	331-585-0020	7-1-04	Amend	8-1-04
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331-530-0010	7-1-04	Am. & Ren.	8-1-04	331-590-0010	7-1-04	Repeal	8-1-04
331-530-0020	7-1-04	Adopt	8-1-04	331-590-0020	7-1-04	Amend	8-1-04
331-535-0000	7-1-04	Amend	8-1-04	331-630-0010	7-1-04	Adopt	8-1-04
331-535-0010	7-1-04	Amend	8-1-04	331-650-0000	7-1-04	Adopt	8-1-04
331-535-0020	7-1-04	Amend	8-1-04	331-700-0000	7-1-04	Repeal	8-1-04
331-535-0030	7-1-04	Amend	8-1-04	331-700-0010	7-1-04	Repeal	8-1-04
331-535-0050	7-1-04	Amend	8-1-04	331-705-0000	7-1-04	Repeal	8-1-04
331-535-0060	7-1-04	Amend	8-1-04	331-705-0010	7-1-04	Repeal	8-1-04
331-535-0070	7-1-04	Amend	8-1-04	331-705-0020	7-1-04	Repeal	8-1-04
331-535-0080	7-1-04	Amend	8-1-04	331-705-0030	7-1-04	Repeal	8-1-04
331-540-0000	7-1-04	Amend	8-1-04	331-705-0040	7-1-04	Repeal	8-1-04
331-540-0010	7-1-04	Amend	8-1-04	331-705-0050	7-1-04	Amend	8-1-04
331-540-0020	7-1-04	Amend	8-1-04	331-705-0060	7-1-04	Amend	8-1-04
331-545-0000	7-1-04	Amend	8-1-04	331-710-0000	7-1-04	Amend	8-1-04
331-545-0010	7-1-04	Repeal	8-1-04	331-710-0010	7-1-04	Amend	8-1-04
331-545-0020	7-1-04	Amend	8-1-04	331-710-0020	7-1-04	Amend	8-1-04
331-550-0000	7-1-04	Amend	8-1-04	331-710-0030	7-1-04	Amend	8-1-04
331-555-0000	7-1-04	Repeal	8-1-04	331-715-0000	7-1-04	Amend	8-1-04
331-555-0010	7-1-04	Amend	8-1-04	331-715-0010	7-1-04	Amend	8-1-04
331-555-0020	7-1-04	Am. & Ren.	8-1-04	331-715-0020	7-1-04	Repeal	8-1-04
331-555-0030	7-1-04	Amend	8-1-04	331-715-0030	7-1-04	Amend	8-1-04
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331-555-0050	7-1-04	Repeal	8-1-04	331-715-0050	7-1-04	Repeal	8-1-04
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331-560-0020	7-1-04	Amend	8-1-04	331-720-0020	7-1-04	Amend	8-1-04
331-560-0030	7-1-04	Amend	8-1-04	331-725-0000	7-1-04	Repeal	8-1-04
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331-565-0050	7-1-04	Repeal	8-1-04	332-001-0010	7-1-04	Repeal	8-1-04
331-565-0060	7-1-04	Amend	8-1-04	332-001-0020	7-1-04	Repeal	8-1-04
331-565-0070	7-1-04	Repeal	8-1-04	332-001-0030	7-1-04	Repeal	8-1-04
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332-015-0050	7-1-04	Amend	8-1-04	333-020-0127	12-16-03	Adopt	2-1-04
332-015-0060	7-1-04	Amend	8-1-04	333-020-0130	12-16-03	Amend	2-1-04
332-015-0065	7-1-04	Amend	8-1-04	333-020-0135	12-16-03	Amend	2-1-04
332-015-0070	7-1-04	Amend	8-1-04	333-020-0140	12-16-03	Amend	2-1-04
332-020-0000	7-1-04	Amend	8-1-04	333-020-0145	12-16-03	Amend	2-1-04
332-020-0010	7-1-04	Amend	8-1-04	333-020-0147	12-16-03	Adopt	2-1-04
332-020-0015	7-1-04	Amend	8-1-04	333-020-0149	12-16-03	Adopt	2-1-04
332-020-0020	7-1-04	Amend	8-1-04	333-020-0150	12-16-03	Amend	2-1-04
332-025-0000	7-1-04	Repeal	8-1-04	333-020-0151	12-16-03	Adopt	2-1-04
332-025-0010	7-1-04	Repeal	8-1-04	333-020-0153	12-16-03	Adopt	2-1-04
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332-025-0021	7-1-04	Amend	8-1-04	333-020-0160	12-16-03	Amend	2-1-04
332-025-0022	7-1-04	Amend	8-1-04	333-020-0165	12-16-03	Amend	2-1-04
332-025-0030	7-1-04	Amend	8-1-04	333-024-0500	3-23-04	Am. & Ren.	5-1-04
332-025-0040	7-1-04	Amend	8-1-04	333-024-0510	3-23-04	Am. & Ren.	5-1-04
332-025-0050	7-1-04	Amend	8-1-04	333-024-0520	3-23-04	Renumber	5-1-04
332-030-0000	7-1-04	Amend	8-1-04	333-024-0530	3-23-04	Renumber	5-1-04
332-030-0010	7-1-04	Repeal	8-1-04	333-024-0540	3-23-04	Am. & Ren.	5-1-04
332-030-0020	7-1-04	Repeal	8-1-04	333-024-0550	3-23-04	Am. & Ren.	5-1-04
332-030-0030	7-1-04	Repeal	8-1-04	333-024-0560	3-23-04	Repeal	5-1-04
333-005-0000	3-29-04	Adopt	5-1-04	333-025-0000	7-1-04	Am. & Ren.	8-1-04
333-005-0010	3-29-04	Adopt	5-1-04	333-025-0002	7-1-04	Am. & Ren.	8-1-04
333-005-0020	3-29-04	Adopt	5-1-04	333-025-0002(5)-(9)	7-1-04	Am. & Ren.	8-1-04
333-005-0030	3-29-04	Adopt	5-1-04	333-025-0004(1)-(10)	7-1-04	Am. & Ren.	8-1-04
333-005-0040	3-29-04	Adopt	5-1-04	333-025-0004(11)-(13)	7-1-04	Am. & Ren.	8-1-04
333-005-0050	3-29-04	Adopt	5-1-04	333-025-0005	7-1-04	Am. & Ren.	8-1-04
333-005-0060	3-29-04	Adopt	5-1-04	333-025-0006	7-1-04	Am. & Ren.	8-1-04
333-008-0030	4-1-04	Amend(T)	5-1-04	333-025-0007	7-1-04	Am. & Ren.	8-1-04
333-012-0050	4-9-04	Amend	5-1-04	333-025-0007(5)-(10)	7-1-04	Am. & Ren.	8-1-04
333-012-0053	4-9-04	Adopt	5-1-04	333-025-0008	7-1-04	Am. & Ren.	8-1-04
333-012-0055	4-9-04	Amend	5-1-04	333-025-0009	7-1-04	Am. & Ren.	8-1-04
333-012-0057	4-9-04	Amend	5-1-04	333-025-0012	7-1-04	Am. & Ren.	8-1-04
333-012-0060	4-9-04	Amend	5-1-04	333-025-0014	7-1-04	Am. & Ren.	8-1-04
333-012-0061	4-9-04	Adopt	5-1-04	333-025-0018	7-1-04	Repeal	8-1-04
333-012-0063	4-9-04	Adopt	5-1-04	333-025-0027	7-1-04	Am. & Ren.	8-1-04
333-012-0065	4-9-04	Amend	5-1-04	333-025-0029	7-1-04	Am. & Ren.	8-1-04
333-012-0067	4-9-04	Adopt	5-1-04	333-025-0030	7-1-04	Repeal	8-1-04
333-012-0070	4-9-04	Amend	5-1-04	333-025-0040	7-1-04	Am. & Ren.	8-1-04
333-013-0006	1-2-04	Repeal	2-1-04	333-025-0050	7-1-04	Am. & Ren.	8-1-04
333-013-0026	1-2-04	Repeal	2-1-04	333-025-0065	7-1-04	Am. & Ren.	8-1-04
333-015-0025	5-7-04	Amend(T)	6-1-04	333-025-0070	7-1-04	Repeal	8-1-04
333-015-0030	5-7-04	Amend(T)	6-1-04	333-025-0075	7-1-04	Am. & Ren.	8-1-04
333-015-0034	5-7-04	Amend(T)	6-1-04	333-025-0080	7-1-04	Repeal	8-1-04
333-015-0035	5-7-04	Amend(T)	6-1-04	333-025-0090	7-1-04	Repeal	8-1-04
333-015-0040	5-7-04	Amend(T)	6-1-04	333-025-0095	7-1-04	Repeal	8-1-04
333-015-0045	5-7-04	Amend(T)	6-1-04	333-025-0100	3-23-04	Adopt	5-1-04
333-015-0050	5-7-04	Amend(T)	6-1-04	333-025-0100(T)	3-23-04	Repeal	5-1-04
333-015-0055	5-7-04	Suspend	6-1-04	333-025-0105	3-23-04	Adopt	5-1-04
333-015-0060	5-7-04	Amend(T)	6-1-04	333-025-0105(T)	3-23-04	Repeal	5-1-04
333-015-0065	5-7-04	Adopt(T)	6-1-04	333-025-0110	3-23-04	Adopt	5-1-04
333-015-0070	5-7-04	Adopt(T)	6-1-04	333-025-0110(T)	3-23-04	Repeal	5-1-04
333-015-0075	5-7-04	Adopt(T)	6-1-04	333-025-0115	3-23-04	Adopt	5-1-04
333-015-0080	5-7-04	Adopt(T)	6-1-04	333-025-0115(T)	3-23-04	Repeal	5-1-04
333-015-0085	5-7-04	Adopt(T)	6-1-04	333-025-0120	3-23-04	Adopt	5-1-04
333-015-0090	5-7-04	Adopt(T)	6-1-04	333-025-0120(T)	3-23-04	Repeal	5-1-04

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333-025-0125(T)	3-23-04	Repeal	5-1-04	333-061-0058(T)	5-1-04	Repeal	8-1-04
333-025-0130	3-23-04	Adopt	5-1-04	333-061-0060	4-9-04	Amend(T)	5-1-04
333-025-0130(T)	3-23-04	Repeal	5-1-04	333-061-0060	5-1-04	Amend	8-1-04
333-025-0135(T)	3-23-04	Repeal	5-1-04	333-061-0060(T)	5-1-04	Repeal	8-1-04
333-025-0140(T)	3-23-04	Repeal	5-1-04	333-061-0061	4-9-04	Amend(T)	5-1-04
333-025-0145(T)	3-23-04	Repeal	5-1-04	333-061-0061	5-1-04	Amend	8-1-04
333-025-0150(T)	3-23-04	Repeal	5-1-04	333-061-0061(T)	5-1-04	Repeal	8-1-04
333-025-0155(T)	3-23-04	Repeal	5-1-04	333-061-0064	4-9-04	Adopt(T)	5-1-04
333-025-0160(T)	3-23-04	Repeal	5-1-04	333-061-0064	5-1-04	Adopt	8-1-04
333-029-0105	2-13-04	Amend(T)	3-1-04	333-061-0064(T)	5-1-04	Repeal	8-1-04
333-029-0105	4-9-04	Amend	5-1-04	333-061-0065	4-9-04	Amend(T)	5-1-04
333-029-0105(T)	4-9-04	Repeal	5-1-04	333-061-0065	5-1-04	Amend	8-1-04
333-029-0110	2-13-04	Amend(T)	3-1-04	333-061-0065(T)	5-1-04	Repeal	8-1-04
333-029-0110	4-9-04	Amend	5-1-04	333-061-0085	4-9-04	Amend(T)	5-1-04
333-029-0110(T)	4-9-04	Repeal	5-1-04	333-061-0085	5-1-04	Amend	8-1-04
333-030-0095	2-13-04	Amend(T)	3-1-04	333-061-0085(T)	5-1-04	Repeal	8-1-04
333-030-0095	4-9-04	Amend	5-1-04	333-061-0087	4-9-04	Amend(T)	5-1-04
333-030-0095(T)	4-9-04	Repeal	5-1-04	333-061-0087	5-1-04	Amend	8-1-04
333-040-0135	4-9-04	Amend	5-1-04	333-061-0087(T)	5-1-04	Repeal	8-1-04
333-040-0135(T)	4-9-04	Repeal	5-1-04	333-061-0090	4-9-04	Amend(T)	5-1-04
333-054-0000	1-5-04	Amend	2-1-04	333-061-0090	5-1-04	Amend	8-1-04
333-054-0000(T)	1-5-04	Repeal	2-1-04	333-061-0090(T)	5-1-04	Repeal	8-1-04
333-054-0010	1-5-04	Amend	2-1-04	333-061-0205	4-9-04	Amend(T)	5-1-04
333-054-0010(T)	1-5-04	Repeal	2-1-04	333-061-0205	5-1-04	Amend	8-1-04
333-054-0020	1-5-04	Amend	2-1-04	333-061-0205(T)	5-1-04	Repeal	8-1-04
333-054-0020(T)	1-5-04	Repeal	2-1-04	333-061-0210	4-9-04	Amend(T)	5-1-04
333-054-0030	1-5-04	Amend	2-1-04	333-061-0210	5-1-04	Amend	8-1-04
333-054-0030(T)	1-5-04	Repeal	2-1-04	333-061-0210(T)	5-1-04	Repeal	8-1-04
333-054-0040	1-5-04	Amend	2-1-04	333-061-0215	4-9-04	Amend(T)	5-1-04
333-054-0040(T)	1-5-04	Repeal	2-1-04	333-061-0215	5-1-04	Amend	8-1-04
333-054-0050	1-5-04	Amend	2-1-04	333-061-0215(T)	5-1-04	Repeal	8-1-04
333-054-0050(T)	1-5-04	Repeal	2-1-04	333-061-0220	4-9-04	Amend(T)	5-1-04
333-054-0060	1-5-04	Amend	2-1-04	333-061-0220	5-1-04	Amend	8-1-04
333-054-0060(T)	1-5-04	Repeal	2-1-04	333-061-0220(T)	5-1-04	Repeal	8-1-04
333-054-0070	1-5-04	Amend	2-1-04	333-061-0225	4-9-04	Amend(T)	5-1-04
333-054-0070(T)	1-5-04	Repeal	2-1-04	333-061-0225	5-1-04	Amend	8-1-04
333-054-0090	1-5-04	Repeal	2-1-04	333-061-0225(T)	5-1-04	Repeal	8-1-04
333-054-0100	1-5-04	Adopt	2-1-04	333-061-0228	4-9-04	Adopt(T)	5-1-04
333-054-0100(T)	1-5-04	Repeal	2-1-04	333-061-0228	5-1-04	Adopt	8-1-04
333-055-0015	3-23-04	Amend	5-1-04	333-061-0228(T)	5-1-04	Repeal	8-1-04
333-055-0030	3-23-04	Amend	5-1-04	333-061-0230	4-9-04	Amend(T)	5-1-04
333-055-0035	3-23-04	Amend	5-1-04	333-061-0230	5-1-04	Amend	8-1-04
333-061-0020	4-9-04	Amend(T)	5-1-04	333-061-0230(T)	5-1-04	Repeal	8-1-04
333-061-0020	5-1-04	Amend	8-1-04	333-061-0235	4-9-04	Amend(T)	5-1-04
333-061-0020(T)	5-1-04	Repeal	8-1-04	333-061-0235	5-1-04	Amend	8-1-04
333-061-0025	4-9-04	Amend(T)	5-1-04	333-061-0235(T)	5-1-04	Repeal	8-1-04
333-061-0025	5-1-04	Amend	8-1-04	333-061-0240	4-9-04	Suspend	5-1-04
333-061-0025(T)	5-1-04	Repeal	8-1-04	333-061-0240	5-1-04	Repeal	8-1-04
333-061-0034	4-9-04	Amend(T)	5-1-04	333-061-0245	4-9-04	Amend(T)	5-1-04
333-061-0034	5-1-04	Amend	8-1-04	333-061-0245	5-1-04	Amend	8-1-04
333-061-0034(T)	5-1-04	Repeal	8-1-04	333-061-0245(T)	5-1-04	Repeal	8-1-04
333-061-0057	4-9-04	Amend(T)	5-1-04	333-061-0250	4-9-04	Amend(T)	5-1-04
333-061-0057	5-1-04	Amend	8-1-04	333-061-0250	5-1-04	Amend	8-1-04
333-061-0057(T)	5-1-04	Repeal	8-1-04	333-061-0250(T)	5-1-04	Repeal	8-1-04
333-061-0058	4-9-04	Adopt(T)	5-1-04	333-061-0255	4-9-04	Suspend	5-1-04

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333-061-0260	4-9-04	Amend(T)	5-1-04	333-064-0040(T)	12-8-03	Repeal	1-1-04
333-061-0260	5-1-04	Amend	8-1-04	333-064-0060	12-8-03	Amend	1-1-04
333-061-0260(T)	5-1-04	Repeal	8-1-04	333-064-0060(T)	12-8-03	Repeal	1-1-04
333-061-0265	4-9-04	Amend(T)	5-1-04	333-064-0065	12-8-03	Amend	1-1-04
333-061-0265	5-1-04	Amend	8-1-04	333-064-0065(T)	12-8-03	Repeal	1-1-04
333-061-0265(T)	5-1-04	Repeal	8-1-04	333-064-0070	12-8-03	Adopt	1-1-04
333-061-0270	4-9-04	Amend(T)	5-1-04	333-064-0070	7-1-04	Amend	8-1-04
333-061-0270	5-1-04	Amend	8-1-04	333-064-0070(T)	12-8-03	Repeal	1-1-04
333-061-0270(T)	5-1-04	Repeal	8-1-04	333-150-0000	2-13-04	Amend(T)	3-1-04
333-061-0272	4-9-04	Adopt(T)	5-1-04	333-150-0000	4-9-04	Amend	5-1-04
333-061-0272	5-1-04	Adopt	8-1-04	333-150-0000(T)	4-9-04	Repeal	5-1-04
333-061-0272(T)	5-1-04	Repeal	8-1-04	333-157-0045	2-13-04	Amend(T)	3-1-04
333-061-0290	4-9-04	Amend(T)	5-1-04	333-157-0045	4-9-04	Amend	5-1-04
333-061-0290	5-1-04	Amend	8-1-04	333-157-0045(T)	4-9-04	Repeal	5-1-04
333-061-0290(T)	5-1-04	Repeal	8-1-04	333-157-0050	2-13-04	Suspend	3-1-04
333-063-0005	7-1-04	Repeal	6-1-04	333-157-0050	4-9-04	Repeal	5-1-04
333-063-0010	7-1-04	Repeal	6-1-04	333-157-0060	2-13-04	Suspend	3-1-04
333-063-0015	7-1-04	Repeal	6-1-04	333-157-0060	4-9-04	Repeal	5-1-04
333-063-0020	7-1-04	Repeal	6-1-04	333-157-0090	2-13-04	Suspend	3-1-04
333-063-0025	7-1-04	Repeal	6-1-04	333-157-0090	4-9-04	Repeal	5-1-04
333-063-0030	7-1-04	Repeal	6-1-04	333-162-0300	2-13-04	Amend(T)	3-1-04
333-063-0035	7-1-04	Repeal	6-1-04	333-162-0300	4-9-04	Amend	5-1-04
333-063-0040	7-1-04	Repeal	6-1-04	333-162-0300(T)	4-9-04	Repeal	5-1-04
333-063-0045	7-1-04	Repeal	6-1-04	333-162-0930	2-13-04	Amend(T)	3-1-04
333-063-0050	7-1-04	Repeal	6-1-04	333-162-0930	4-9-04	Amend	5-1-04
333-063-0055	7-1-04	Repeal	6-1-04	333-162-0930(T)	4-9-04	Repeal	5-1-04
333-063-0060	7-1-04	Repeal	6-1-04	333-162-1005	2-13-04	Adopt(T)	3-1-04
333-063-0065	7-1-04	Repeal	6-1-04	333-162-1005	4-9-04	Adopt	5-1-04
333-063-0070	7-1-04	Repeal	6-1-04	333-162-1005(T)	4-9-04	Repeal	5-1-04
333-063-0075	7-1-04	Repeal	6-1-04	333-170-0010	2-13-04	Amend(T)	3-1-04
333-063-0085	7-1-04	Repeal	6-1-04	333-170-0010	4-9-04	Amend	5-1-04
333-063-0090	7-1-04	Repeal	6-1-04	333-170-0010(T)	4-9-04	Repeal	5-1-04
333-063-0095	7-1-04	Repeal	6-1-04	333-170-0020	2-13-04	Amend(T)	3-1-04
333-063-0100	7-1-04	Repeal	6-1-04	333-170-0020	4-9-04	Amend	5-1-04
333-063-0105	7-1-04	Repeal	6-1-04	333-170-0020(T)	4-9-04	Repeal	5-1-04
333-063-0110	7-1-04	Repeal	6-1-04	333-170-0030	2-13-04	Amend(T)	3-1-04
333-063-0115	7-1-04	Repeal	6-1-04	333-170-0030	4-9-04	Amend	5-1-04
333-063-0120	7-1-04	Repeal	6-1-04	333-170-0030(T)	4-9-04	Repeal	5-1-04
333-063-0125	7-1-04	Repeal	6-1-04	333-170-0040	2-13-04	Amend(T)	3-1-04
333-063-0130	7-1-04	Repeal	6-1-04	333-170-0040	4-9-04	Amend	5-1-04
333-063-0135	7-1-04	Repeal	6-1-04	333-170-0040(T)	4-9-04	Repeal	5-1-04
333-063-0140	7-1-04	Repeal	6-1-04	333-170-0050	2-13-04	Amend(T)	3-1-04
333-064-0005	12-8-03	Amend	1-1-04	333-170-0050	4-9-04	Amend	5-1-04
333-064-0005(T)	12-8-03	Repeal	1-1-04	333-170-0050(T)	4-9-04	Repeal	5-1-04
333-064-0010	12-8-03	Amend	1-1-04	333-170-0060	2-13-04	Amend(T)	3-1-04
333-064-0010(T)	12-8-03	Repeal	1-1-04	333-170-0060	4-9-04	Amend	5-1-04
333-064-0015	12-8-03	Amend	1-1-04	333-170-0060(T)	4-9-04	Repeal	5-1-04
333-064-0015(T)	12-8-03	Repeal	1-1-04	333-170-0070	2-13-04	Amend(T)	3-1-04
333-064-0025	12-8-03	Amend	1-1-04	333-170-0070	4-9-04	Amend	5-1-04
333-064-0025	7-1-04	Amend	8-1-04	333-170-0070(T)	4-9-04	Repeal	5-1-04
333-064-0025(T)	12-8-03	Repeal	1-1-04	333-170-0080	2-13-04	Amend(T)	3-1-04
333-064-0030	12-8-03	Amend	1-1-04	333-170-0080	4-9-04	Amend	5-1-04
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333-170-0100	4-9-04	Amend	5-1-04	333-536-0040	2-6-04	Adopt(T)	3-1-04
333-170-0100(T)	4-9-04	Repeal	5-1-04	333-536-0040	6-25-04	Adopt	8-1-04
333-170-0120	2-13-04	Amend(T)	3-1-04	333-536-0040(T)	6-25-04	Repeal	8-1-04
333-170-0120	4-9-04	Amend	5-1-04	333-536-0045	2-6-04	Adopt(T)	3-1-04
333-170-0120(T)	4-9-04	Repeal	5-1-04	333-536-0045	6-25-04	Adopt	8-1-04
333-170-0130	2-13-04	Amend(T)	3-1-04	333-536-0045(T)	6-25-04	Repeal	8-1-04
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333-170-0130(T)	4-9-04	Repeal	5-1-04	333-536-0050	6-25-04	Amend	8-1-04
333-175-0000	6-18-04	Repeal	8-1-04	333-536-0050(T)	6-25-04	Repeal	8-1-04
333-175-0001	6-18-04	Adopt	8-1-04	333-536-0055	2-6-04	Adopt(T)	3-1-04
333-175-0010	6-18-04	Repeal	8-1-04	333-536-0055	6-25-04	Adopt	8-1-04
333-175-0011	6-18-04	Adopt	8-1-04	333-536-0055(T)	6-25-04	Repeal	8-1-04
333-175-0020	6-18-04	Repeal	8-1-04	333-536-0060	2-6-04	Adopt(T)	3-1-04
333-175-0021	6-18-04	Adopt	8-1-04	333-536-0060	6-25-04	Adopt	8-1-04
333-175-0021	6-18-04	Adopt	8-1-04	333-536-0060(T)	6-25-04	Repeal	8-1-04
333-175-0030	6-18-04	Repeal	8-1-04	333-536-0065	2-6-04	Adopt(T)	3-1-04
333-175-0031	6-18-04	Adopt	8-1-04	333-536-0065	6-25-04	Adopt	8-1-04
333-175-0041	6-18-04	Adopt	8-1-04	333-536-0065(T)	6-25-04	Repeal	8-1-04
333-175-0041	6-18-04	Adopt	8-1-04	333-536-0070	2-6-04	Adopt(T)	3-1-04
333-175-0051	6-18-04	Adopt	8-1-04	333-536-0070	6-25-04	Adopt	8-1-04
333-175-0061	6-18-04	Adopt	8-1-04	333-536-0070(T)	6-25-04	Repeal	8-1-04
333-175-0071	6-18-04	Adopt	8-1-04	333-536-0075	2-6-04	Adopt(T)	3-1-04
333-175-0081	6-18-04	Adopt	8-1-04	333-536-0075	6-25-04	Adopt	8-1-04
333-175-0081	6-18-04	Adopt	8-1-04	333-536-0075(T)	6-25-04	Repeal	8-1-04
333-175-0091	6-18-04	Adopt	8-1-04	333-536-0080	2-6-04	Adopt(T)	3-1-04
333-175-0101	6-18-04	Adopt	8-1-04	333-536-0080	6-25-04	Adopt	8-1-04
333-175-0111	6-18-04	Adopt	8-1-04	333-536-0080(T)	6-25-04	Repeal	8-1-04
333-505-0007	2-6-04	Amend	3-1-04	333-536-0085	2-6-04	Adopt(T)	3-1-04
333-535-0040	3-17-04	Suspend	5-1-04	333-536-0085	6-25-04	Adopt	8-1-04
333-535-0040	5-26-04	Repeal	7-1-04	333-536-0085(T)	6-25-04	Repeal	8-1-04
333-535-0041	3-17-04	Adopt(T)	5-1-04	333-536-0090	2-6-04	Adopt(T)	3-1-04
333-535-0041	5-26-04	Adopt	7-1-04	333-536-0090	6-25-04	Adopt	8-1-04
333-535-0041(T)	5-26-04	Repeal	7-1-04	333-536-0090(T)	6-25-04	Repeal	8-1-04
333-535-0060	3-17-04	Repeal	5-1-04	333-536-0095	2-6-04	Adopt(T)	3-1-04
333-535-0061	3-17-04	Adopt	5-1-04	333-536-0095	6-25-04	Adopt	8-1-04
333-536-0000	2-6-04	Adopt(T)	3-1-04	333-536-0095(T)	6-25-04	Repeal	8-1-04
333-536-0000	6-25-04	Adopt	8-1-04	333-536-0100	2-6-04	Adopt(T)	3-1-04
333-536-0000(T)	6-25-04	Repeal	8-1-04	333-536-0100	6-25-04	Adopt	8-1-04
333-536-0005	2-6-04	Adopt(T)	3-1-04	333-536-0100(T)	6-25-04	Repeal	8-1-04
333-536-0005	6-25-04	Adopt	8-1-04	333-560-0010	1-16-04	Amend	3-1-04
333-536-0005(T)	6-25-04	Repeal	8-1-04	333-635-0000	1-16-04	Repeal	3-1-04
333-536-0010	2-6-04	Adopt(T)	3-1-04	333-635-0010	1-16-04	Repeal	3-1-04
333-536-0010	6-25-04	Amend	8-1-04	333-635-0020	1-16-04	Repeal	3-1-04
333-536-0010(T)	6-25-04	Repeal	8-1-04	333-635-0030	1-16-04	Repeal	3-1-04
333-536-0015	2-6-04	Adopt(T)	3-1-04	333-675-0000	3-11-04	Amend	4-1-04
333-536-0015	6-25-04	Adopt	8-1-04	333-675-0010	3-11-04	Am. & Ren.	4-1-04
333-536-0015(T)	6-25-04	Repeal	8-1-04	333-675-0020	3-11-04	Amend	4-1-04
333-536-0020	2-6-04	Adopt(T)	3-1-04	333-675-0030	3-11-04	Amend	4-1-04
333-536-0020	6-25-04	Adopt	8-1-04	333-675-0040	3-11-04	Amend	4-1-04
333-536-0020(T)	6-25-04	Repeal	8-1-04	334-010-0005	2-23-04	Amend	4-1-04
333-536-0025	2-6-04	Adopt(T)	3-1-04	334-010-0010	2-23-04	Amend	4-1-04
333-536-0025	6-25-04	Adopt	8-1-04	334-010-0015	2-23-04	Amend	4-1-04
333-536-0025(T)	6-25-04	Repeal	8-1-04	334-010-0017	2-23-04	Amend	4-1-04
333-536-0030	2-6-04	Adopt(T)	3-1-04	334-010-0025	2-23-04	Amend	4-1-04
333-536-0030	6-25-04	Adopt	8-1-04				
333-536-0030(T)	6-25-04	Repeal	8-1-04				
333-536-0035	2-6-04	Adopt(T)	3-1-04				

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334-010-0050	3-16-04	Amend(T)	5-1-04	340-011-0035	12-12-03	Am. & Ren.	1-1-04
335-005-0015	5-26-04	Amend	7-1-04	340-011-0097	12-12-03	Am. & Ren.	1-1-04
335-005-0025	2-6-04	Amend	3-1-04	340-011-0098	12-12-03	Am. & Ren.	1-1-04
335-005-0025	5-26-04	Amend	7-1-04	340-011-0103	12-12-03	Am. & Ren.	1-1-04
335-010-0050	5-26-04	Adopt	7-1-04	340-011-0106	12-12-03	Renumber	1-1-04
335-010-0060	5-26-04	Adopt	7-1-04	340-011-0107	12-12-03	Am. & Ren.	1-1-04
335-010-0070	5-26-04	Adopt	7-1-04	340-011-0122	12-12-03	Renumber	1-1-04
335-010-0080	5-26-04	Adopt	7-1-04	340-011-0124	12-12-03	Am. & Ren.	1-1-04
335-070-0030	2-6-04	Amend	3-1-04	340-011-0131	12-12-03	Am. & Ren.	1-1-04
335-070-0030	5-26-04	Amend	7-1-04	340-011-0132	12-12-03	Am. & Ren.	1-1-04
335-070-0060	2-6-04	Amend	3-1-04	340-011-0136	12-12-03	Am. & Ren.	1-1-04
335-070-0060	5-26-04	Amend	7-1-04	340-011-0520	12-12-03	Adopt	1-1-04
335-095-0020	2-6-04	Amend	3-1-04	340-011-0535	12-12-03	Adopt	1-1-04
335-095-0020	5-26-04	Amend	7-1-04	340-011-0545	12-12-03	Adopt	1-1-04
335-095-0030	2-6-04	Amend	3-1-04	340-011-0550	12-12-03	Adopt	1-1-04
335-095-0030	5-26-04	Amend	7-1-04	340-011-0555	12-12-03	Adopt	1-1-04
337-020-0010	4-15-04	Adopt	5-1-04	340-011-0580	12-12-03	Adopt	1-1-04
337-021-0050	4-15-04	Repeal	5-1-04	340-011-0585	12-12-03	Adopt	1-1-04
338-001-0000	7-1-04	Repeal	8-1-04	340-016-0055	6-8-04	Amend(T)	7-1-04
338-001-0005	7-1-04	Repeal	8-1-04	340-035-0035	6-11-04	Amend	7-1-04
338-001-0008	7-1-04	Repeal	8-1-04	340-035-0110	6-11-04	Adopt	7-1-04
338-001-0010	7-1-04	Repeal	8-1-04	340-041-0001	12-9-03	Amend	1-1-04
338-001-0015	7-1-04	Repeal	8-1-04	340-041-0002	12-9-03	Adopt	1-1-04
338-005-0000	7-1-04	Repeal	8-1-04	340-041-0002	5-28-04	Amend	7-1-04
338-005-0010	7-1-04	Repeal	8-1-04	340-041-0004	12-9-03	Adopt	1-1-04
338-005-0020	7-1-04	Amend	8-1-04	340-041-0006	12-9-03	Repeal	1-1-04
338-005-0030	7-1-04	Amend	8-1-04	340-041-0007	12-9-03	Adopt	1-1-04
338-010-0015	3-1-04	Amend(T)	4-1-04	340-041-0009	12-9-03	Adopt	1-1-04
338-010-0015	7-1-04	Amend	8-1-04	340-041-0016	12-9-03	Adopt	1-1-04
338-010-0017	7-1-04	Amend	8-1-04	340-041-0021	12-9-03	Adopt	1-1-04
338-010-0025	3-1-04	Amend(T)	4-1-04	340-041-0026	12-9-03	Repeal	1-1-04
338-010-0025	7-1-04	Amend	8-1-04	340-041-0027	12-9-03	Am. & Ren.	1-1-04
338-010-0030	3-1-04	Amend(T)	4-1-04	340-041-0028	12-9-03	Adopt	1-1-04
338-010-0030	7-1-04	Amend	8-1-04	340-041-0031	12-9-03	Adopt	1-1-04
338-010-0033	7-1-04	Amend	8-1-04	340-041-0032	12-9-03	Adopt	1-1-04
338-010-0035	3-1-04	Amend(T)	4-1-04	340-041-0033	12-9-03	Adopt	1-1-04
338-010-0035	7-1-04	Amend	8-1-04	340-041-0033	5-28-04	Amend	7-1-04
338-010-0038	7-1-04	Amend	8-1-04	340-041-0034	12-9-03	Repeal	1-1-04
338-010-0050	3-1-04	Amend(T)	4-1-04	340-041-0036	12-9-03	Adopt	1-1-04
338-010-0050	7-1-04	Amend	8-1-04	340-041-0046	12-9-03	Adopt	1-1-04
338-010-0060	7-1-04	Repeal	8-1-04	340-041-0053	12-9-03	Adopt	1-1-04
338-020-0000	7-1-04	Amend	8-1-04	340-041-0057	12-9-03	Adopt	1-1-04
338-020-0030	7-1-04	Amend	8-1-04	340-041-0061	12-9-03	Adopt	1-1-04
338-020-0050	7-1-04	Amend	8-1-04	340-041-0061	5-28-04	Amend	7-1-04
338-020-0060	7-1-04	Repeal	8-1-04	340-041-0101	12-9-03	Adopt	1-1-04
338-030-0000	7-1-04	Repeal	8-1-04	340-041-0103	12-9-03	Adopt	1-1-04
338-030-0010	7-1-04	Repeal	8-1-04	340-041-0104	12-9-03	Adopt	1-1-04
338-030-0020	7-1-04	Amend	8-1-04	340-041-0120	12-9-03	Repeal	1-1-04
338-030-0030	7-1-04	Repeal	8-1-04	340-041-0121	12-9-03	Adopt	1-1-04
338-030-0040	7-1-04	Repeal	8-1-04	340-041-0122	12-9-03	Adopt	1-1-04
338-030-0050	7-1-04	Repeal	8-1-04	340-041-0124	12-9-03	Adopt	1-1-04
339-005-0000	6-3-04	Amend	7-1-04	340-041-0130	12-9-03	Adopt	1-1-04
339-010-0023	6-3-04	Amend	7-1-04	340-041-0133	12-9-03	Adopt	1-1-04
339-020-0030	6-3-04	Amend	7-1-04	340-041-0135	12-9-03	Adopt	1-1-04
339-020-0050	6-3-04	Amend	7-1-04	340-041-0140	12-9-03	Adopt	1-1-04

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340-041-0145	12-9-03	Adopt	1-1-04	340-041-0324	12-9-03	Adopt	1-1-04
340-041-0150	12-9-03	Am. & Ren.	1-1-04	340-041-0325	12-9-03	Repeal	1-1-04
340-041-0151	12-9-03	Adopt	1-1-04	340-041-0326	12-9-03	Adopt	1-1-04
340-041-0154	12-9-03	Adopt	1-1-04	340-041-0330	12-9-03	Adopt	1-1-04
340-041-0156	12-9-03	Adopt	1-1-04	340-041-0334	12-9-03	Adopt	1-1-04
340-041-0160	12-9-03	Adopt	1-1-04	340-041-0335	12-9-03	Repeal	1-1-04
340-041-0164	12-9-03	Adopt	1-1-04	340-041-0336	12-9-03	Adopt	1-1-04
340-041-0165	12-9-03	Adopt	1-1-04	340-041-0340	12-9-03	Adopt	1-1-04
340-041-0170	12-9-03	Adopt	1-1-04	340-041-0344	12-9-03	Adopt	1-1-04
340-041-0174	12-9-03	Adopt	1-1-04	340-041-0345	12-9-03	Adopt	1-1-04
340-041-0175	12-9-03	Adopt	1-1-04	340-041-0350	12-9-03	Adopt	1-1-04
340-041-0180	12-9-03	Adopt	1-1-04	340-041-0362	12-9-03	Repeal	1-1-04
340-041-0184	12-9-03	Adopt	1-1-04	340-041-0365	12-9-03	Repeal	1-1-04
340-041-0185	12-9-03	Adopt	1-1-04	340-041-0375	12-9-03	Repeal	1-1-04
340-041-0190	12-9-03	Adopt	1-1-04	340-041-0385	12-9-03	Repeal	1-1-04
340-041-0194	12-9-03	Adopt	1-1-04	340-041-0442	12-9-03	Repeal	1-1-04
340-041-0195	12-9-03	Adopt	1-1-04	340-041-0445	12-9-03	Repeal	1-1-04
340-041-0201	12-9-03	Adopt	1-1-04	340-041-0455	12-9-03	Repeal	1-1-04
340-041-0202	12-9-03	Repeal	1-1-04	340-041-0470	12-9-03	Repeal	1-1-04
340-041-0204	12-9-03	Adopt	1-1-04	340-041-0482	12-9-03	Repeal	1-1-04
340-041-0205	12-9-03	Repeal	1-1-04	340-041-0485	12-9-03	Repeal	1-1-04
340-041-0207	12-9-03	Adopt	1-1-04	340-041-0495	12-9-03	Repeal	1-1-04
340-041-0215	12-9-03	Repeal	1-1-04	340-041-0522	12-9-03	Repeal	1-1-04
340-041-0220	12-9-03	Adopt	1-1-04	340-041-0525	12-9-03	Repeal	1-1-04
340-041-0224	12-9-03	Adopt	1-1-04	340-041-0535	12-9-03	Repeal	1-1-04
340-041-0225	12-9-03	Adopt	1-1-04	340-041-0562	12-9-03	Repeal	1-1-04
340-041-0230	12-9-03	Adopt	1-1-04	340-041-0565	12-9-03	Repeal	1-1-04
340-041-0234	12-9-03	Adopt	1-1-04	340-041-0575	12-9-03	Repeal	1-1-04
340-041-0235	12-9-03	Adopt	1-1-04	340-041-0580	12-9-03	Repeal	1-1-04
340-041-0242	12-9-03	Repeal	1-1-04	340-041-0602	12-9-03	Repeal	1-1-04
340-041-0245	12-9-03	Repeal	1-1-04	340-041-0605	12-9-03	Repeal	1-1-04
340-041-0250	12-9-03	Adopt	1-1-04	340-041-0615	12-9-03	Repeal	1-1-04
340-041-0254	12-9-03	Adopt	1-1-04	340-041-0642	12-9-03	Repeal	1-1-04
340-041-0255	12-9-03	Repeal	1-1-04	340-041-0645	12-9-03	Repeal	1-1-04
340-041-0256	12-9-03	Adopt	1-1-04	340-041-0655	12-9-03	Repeal	1-1-04
340-041-0260	12-9-03	Adopt	1-1-04	340-041-0682	12-9-03	Repeal	1-1-04
340-041-0264	12-9-03	Adopt	1-1-04	340-041-0765	12-9-03	Repeal	1-1-04
340-041-0265	12-9-03	Adopt	1-1-04	340-041-0775	12-9-03	Repeal	1-1-04
340-041-0270	12-9-03	Repeal	1-1-04	340-041-0802	12-9-03	Repeal	1-1-04
340-041-0271	12-9-03	Adopt	1-1-04	340-041-0805	12-9-03	Repeal	1-1-04
340-041-0274	12-9-03	Adopt	1-1-04	340-041-0815	12-9-03	Repeal	1-1-04
340-041-0275	12-9-03	Adopt	1-1-04	340-041-0842	12-9-03	Repeal	1-1-04
340-041-0282	12-9-03	Repeal	1-1-04	340-041-0845	12-9-03	Repeal	1-1-04
340-041-0285	12-9-03	Repeal	1-1-04	340-041-0855	12-9-03	Repeal	1-1-04
340-041-0286	12-9-03	Adopt	1-1-04	340-041-0882	12-9-03	Repeal	1-1-04
340-041-0289	12-9-03	Adopt	1-1-04	340-041-0885	12-9-03	Repeal	1-1-04
340-041-0290	12-9-03	Adopt	1-1-04	340-041-0895	12-9-03	Repeal	1-1-04
340-041-0295	12-9-03	Repeal	1-1-04	340-041-0922	12-9-03	Repeal	1-1-04
340-041-0300	12-9-03	Adopt	1-1-04	340-041-0925	12-9-03	Repeal	1-1-04
340-041-0304	12-9-03	Adopt	1-1-04	340-041-0935	12-9-03	Repeal	1-1-04
340-041-0305	12-9-03	Adopt	1-1-04	340-041-0962	12-9-03	Repeal	1-1-04
340-041-0310	12-9-03	Adopt	1-1-04	340-041-0965	12-9-03	Repeal	1-1-04
340-041-0314	12-9-03	Adopt	1-1-04	340-041-0975	12-9-03	Repeal	1-1-04
340-041-0315	12-9-03	Adopt	1-1-04	340-048-0005	4-15-04	Amend	5-1-04
340-041-0320	12-9-03	Adopt	1-1-04	340-048-0010	4-15-04	Amend	5-1-04

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340-048-0020	4-15-04	Amend	5-1-04	410-007-0200	3-1-04	Adopt	4-1-04
340-048-0024	4-15-04	Am. & Ren.	5-1-04	410-007-0210	3-1-04	Adopt	4-1-04
340-048-0025	4-15-04	Am. & Ren.	5-1-04	410-007-0220	3-1-04	Adopt	4-1-04
340-048-0025	4-15-04	Am. & Ren.	5-1-04	410-007-0230	3-1-04	Adopt	4-1-04
340-048-0027	4-15-04	Adopt	5-1-04	410-007-0240	3-1-04	Adopt	4-1-04
340-048-0030	4-15-04	Am. & Ren.	5-1-04	410-007-0250	3-1-04	Adopt	4-1-04
340-048-0035	4-15-04	Repeal	5-1-04	410-007-0260	3-1-04	Adopt	4-1-04
340-048-0037	4-15-04	Adopt	5-1-04	410-007-0270	3-1-04	Adopt	4-1-04
340-048-0040	4-15-04	Am. & Ren.	5-1-04	410-007-0280	3-1-04	Adopt	4-1-04
340-048-0200	4-15-04	Am. & Ren.	5-1-04	410-007-0290	3-1-04	Adopt	4-1-04
340-200-0040	12-12-03	Amend	1-1-04	410-007-0300	3-1-04	Adopt	4-1-04
340-200-0040	4-14-04	Amend	5-1-04	410-007-0310	3-1-04	Adopt	4-1-04
340-214-0400	12-12-03	Adopt	1-1-04	410-007-0320	3-1-04	Adopt	4-1-04
340-214-0410	12-12-03	Adopt	1-1-04	410-007-0330	3-1-04	Adopt	4-1-04
340-214-0420	12-12-03	Adopt	1-1-04	410-007-0340	3-1-04	Adopt	4-1-04
340-214-0430	12-12-03	Adopt	1-1-04	410-007-0350	3-1-04	Adopt	4-1-04
340-224-0010	4-14-04	Amend	5-1-04	410-007-0360	3-1-04	Adopt	4-1-04
340-224-0030	4-14-04	Amend	5-1-04	410-007-0370	3-1-04	Adopt	4-1-04
340-224-0050	4-14-04	Amend	5-1-04	410-007-0380	3-1-04	Adopt	4-1-04
340-224-0070	4-14-04	Amend	5-1-04	410-009-0000	5-26-04	Repeal	7-1-04
340-224-0080	4-14-04	Amend	5-1-04	410-009-0005	5-26-04	Repeal	7-1-04
340-225-0020	4-14-04	Amend	5-1-04	410-009-0010	5-26-04	Repeal	7-1-04
340-225-0050	4-14-04	Amend	5-1-04	410-009-0015	5-26-04	Repeal	7-1-04
340-225-0090	4-14-04	Amend	5-1-04	410-009-0020	5-26-04	Repeal	7-1-04
340-228-0400	12-12-03	Adopt	1-1-04	410-009-0025	5-26-04	Repeal	7-1-04
340-228-0410	12-12-03	Adopt	1-1-04	410-009-0030	5-26-04	Repeal	7-1-04
340-228-0420	12-12-03	Adopt	1-1-04	410-009-0035	5-26-04	Repeal	7-1-04
340-228-0430	12-12-03	Adopt	1-1-04	410-009-0040	5-26-04	Repeal	7-1-04
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340-228-0450	12-12-03	Adopt	1-1-04	410-050-0110	5-1-04	Adopt(T)	6-1-04
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340-228-0470	12-12-03	Adopt	1-1-04	410-050-0130	5-1-04	Adopt(T)	6-1-04
340-228-0480	12-12-03	Adopt	1-1-04	410-050-0140	5-1-04	Adopt(T)	6-1-04
340-228-0490	12-12-03	Adopt	1-1-04	410-050-0150	5-1-04	Adopt(T)	6-1-04
340-228-0500	12-12-03	Adopt	1-1-04	410-050-0160	5-1-04	Adopt(T)	6-1-04
340-228-0510	12-12-03	Adopt	1-1-04	410-050-0170	5-1-04	Adopt(T)	6-1-04
340-228-0520	12-12-03	Adopt	1-1-04	410-050-0180	5-1-04	Adopt(T)	6-1-04
340-228-0530	12-12-03	Adopt	1-1-04	410-050-0190	5-1-04	Adopt(T)	6-1-04
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350-120-0030	4-1-04	Amend	4-1-04	410-050-0400	6-15-04	Adopt(T)	7-1-04
350-120-0040	4-1-04	Amend	4-1-04	410-050-0410	6-15-04	Adopt(T)	7-1-04
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410-007-0020	3-1-04	Repeal	4-1-04	410-050-0450	6-15-04	Adopt(T)	7-1-04
410-007-0030	3-1-04	Repeal	4-1-04	410-050-0460	6-15-04	Adopt(T)	7-1-04
410-007-0040	3-1-04	Repeal	4-1-04	410-050-0470	6-15-04	Adopt(T)	7-1-04
410-007-0050	3-1-04	Repeal	4-1-04	410-050-0480	6-15-04	Adopt(T)	7-1-04
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410-050-0520	6-15-04	Adopt(T)	7-1-04	410-121-0160	4-15-04	Amend	4-1-04
410-050-0530	6-15-04	Adopt(T)	7-1-04	410-121-0180	4-1-04	Repeal	4-1-04
410-050-0540	6-15-04	Adopt(T)	7-1-04	410-121-0185	4-1-04	Amend	4-1-04
410-050-0550	6-15-04	Adopt(T)	7-1-04	410-121-0190	4-1-04	Amend	4-1-04
410-050-0560	6-15-04	Adopt(T)	7-1-04	410-121-0200	4-1-04	Amend	4-1-04
410-050-0570	6-15-04	Adopt(T)	7-1-04	410-121-0300	12-1-03	Amend(T)	1-1-04
410-050-0580	6-15-04	Adopt(T)	7-1-04	410-121-0300	2-1-04	Amend	3-1-04
410-050-0590	6-15-04	Adopt(T)	7-1-04	410-121-0300	5-14-04	Amend(T)	6-1-04
410-120-1160	4-1-04	Amend	4-1-04	410-121-0300	7-1-04	Amend	8-1-04
410-120-1195	1-1-04	Amend	2-1-04	410-121-0300(T)	7-1-04	Repeal	8-1-04
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410-120-1230	6-19-04	Amend(T)	7-1-04	410-121-0420	4-1-04	Amend	4-1-04
410-120-1280	4-1-04	Amend	4-1-04	410-121-0580	4-1-04	Amend	4-1-04
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410-120-1360	4-1-04	Amend	4-1-04	410-122-0030	4-1-04	Amend	5-1-04
410-120-1390	6-1-04	Adopt(T)	7-1-04	410-122-0030	7-1-04	Repeal	8-1-04
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410-120-1540	4-1-04	Amend	4-1-04	410-122-0040	3-15-04	Amend(T)	4-1-04
410-120-1570	4-1-04	Amend	4-1-04	410-122-0040	4-1-04	Amend	5-1-04
410-121-0000	4-1-04	Amend	4-1-04	410-122-0040	5-1-04	Amend	5-1-04
410-121-0021	12-1-03	Adopt	1-1-04	410-122-0040	7-1-04	Amend	8-1-04
410-121-0021	7-1-04	Amend	8-1-04	410-122-0060	4-1-04	Amend	5-1-04
410-121-0030	3-1-04	Amend	4-1-04	410-122-0060	7-1-04	Repeal	8-1-04
410-121-0030	5-1-04	Amend	6-1-04	410-122-0080	4-1-04	Amend	5-1-04
410-121-0030	6-1-04	Amend	7-1-04	410-122-0080	7-1-04	Amend	8-1-04
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410-121-0061	4-1-04	Amend	4-1-04	410-122-0184	7-1-04	Adopt	8-1-04
410-121-0100	4-1-04	Amend	4-1-04	410-122-0186	7-1-04	Adopt	8-1-04
410-121-0135	4-1-04	Amend	4-1-04	410-122-0190	4-1-04	Amend	5-1-04
410-121-0140	12-1-03	Amend	1-1-04	410-122-0190	7-1-04	Amend	8-1-04
410-121-0140	4-1-04	Amend	4-1-04	410-122-0200	4-1-04	Amend	5-1-04
410-121-0143	4-1-04	Amend	4-1-04	410-122-0200	7-1-04	Amend	8-1-04
410-121-0144	4-1-04	Amend	4-1-04	410-122-0202	4-1-04	Amend	5-1-04
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410-121-0148	4-1-04	Amend	4-1-04	410-122-0205	4-1-04	Amend	5-1-04
410-121-0150	4-1-04	Amend	4-1-04	410-122-0205	7-1-04	Amend	8-1-04
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410-122-0300	7-1-04	Amend	8-1-04	410-125-0181(T)	5-1-04	Repeal	6-1-04
410-122-0320	7-1-04	Amend	8-1-04	410-125-0195	1-1-04	Amend	2-1-04
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410-122-0330	7-1-04	Amend	8-1-04	410-125-0410	4-1-04	Amend	4-1-04
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410-122-0340	7-1-04	Amend	8-1-04	410-127-0080	1-1-04	Amend	2-1-04
410-122-0360	7-1-04	Amend	8-1-04	410-129-0080	12-1-03	Amend	1-1-04
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410-122-0365	7-1-04	Amend	8-1-04	410-129-0200	4-1-04	Amend	4-1-04
410-122-0375	4-1-04	Amend	5-1-04	410-129-0260	4-1-04	Amend	4-1-04
410-122-0375	7-1-04	Amend	8-1-04	410-130-0000	4-1-04	Amend	4-1-04
410-122-0380	4-1-04	Amend	5-1-04	410-130-0180	4-1-04	Amend	4-1-04
410-122-0380	7-1-04	Amend	8-1-04	410-130-0200	4-1-04	Amend	4-1-04
410-122-0400	7-1-04	Amend	8-1-04	410-130-0220	4-1-04	Amend	4-1-04
410-122-0420	7-1-04	Amend	8-1-04	410-130-0240	4-1-04	Amend	4-1-04
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410-122-0475	7-1-04	Amend	8-1-04	410-130-0585	4-1-04	Amend	4-1-04
410-122-0480	7-1-04	Amend	8-1-04	410-130-0587	4-1-04	Amend	4-1-04
410-122-0500	7-1-04	Amend	8-1-04	410-130-0680	4-1-04	Amend	4-1-04
410-122-0510	7-1-04	Amend	8-1-04	410-130-0700	4-1-04	Amend	4-1-04
410-122-0520	7-1-04	Amend	8-1-04	410-131-0160	1-1-04	Amend	2-1-04
410-122-0525	4-1-04	Amend	5-1-04	410-131-0280	4-1-04	Amend	4-1-04
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410-122-0540	4-1-04	Amend	5-1-04	410-133-0090	2-1-04	Amend	3-1-04
410-122-0540	7-1-04	Amend	8-1-04	410-141-0000	6-1-04	Amend(T)	7-1-04
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410-122-0680	7-1-04	Amend	8-1-04	410-141-0480	6-1-04	Amend	7-1-04
410-122-0700	4-1-04	Amend	5-1-04	410-141-0500	1-1-04	Amend	2-1-04
410-122-0700	7-1-04	Amend	8-1-04	410-141-0520	1-1-04	Amend	2-1-04
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410-148-0300	4-1-04	Amend	4-1-04	411-055-0034	4-1-04	Amend	5-1-04
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411-009-0060	3-1-04	Repeal	4-1-04	411-055-0091	4-1-04	Amend	5-1-04
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411-015-0100	4-27-04	Amend	6-1-04	411-055-0200	4-1-04	Amend	5-1-04
411-030-0002	6-7-04	Amend	7-1-04	411-055-0210	4-1-04	Amend	5-1-04
411-030-0020	12-11-03	Amend(T)	1-1-04	411-055-0220	4-1-04	Amend	5-1-04
411-030-0020	6-7-04	Amend	7-1-04	411-055-0230	4-1-04	Amend	5-1-04
411-030-0033	12-11-03	Amend(T)	1-1-04	411-055-0240	4-1-04	Amend	5-1-04
411-030-0033	6-7-04	Amend	7-1-04	411-055-0250	4-1-04	Amend	5-1-04
411-030-0040	12-11-03	Amend(T)	1-1-04	411-055-0260	4-1-04	Amend	5-1-04
411-030-0040	6-7-04	Amend	7-1-04	411-055-0270	4-1-04	Amend	5-1-04
411-030-0050	6-7-04	Amend	7-1-04	411-055-0280	4-1-04	Amend	5-1-04
411-030-0060	12-11-03	Amend(T)	1-1-04	411-056-0005	2-4-04	Amend	3-1-04
411-030-0060	6-7-04	Repeal	7-1-04	411-056-0007	2-4-04	Amend	3-1-04
411-030-0065	12-11-03	Amend(T)	1-1-04	411-056-0010	3-23-04	Amend(T)	5-1-04
411-030-0065	6-7-04	Repeal	7-1-04	411-056-0018	3-23-04	Amend(T)	5-1-04
411-030-0070	6-7-04	Amend	7-1-04	411-056-0030	3-23-04	Amend(T)	5-1-04
411-030-0080	6-7-04	Amend	7-1-04	411-070-0359	5-28-04	Amend(T)	7-1-04
411-031-0020	6-1-04	Adopt	7-1-04	411-070-0428	5-28-04	Amend(T)	7-1-04
411-031-0030	6-1-04	Adopt	7-1-04	411-070-0440	5-28-04	Suspend	7-1-04
411-031-0040	6-1-04	Adopt	7-1-04	411-070-0441	5-28-04	Adopt(T)	7-1-04
411-031-0050	6-1-04	Adopt	7-1-04	411-070-0446	5-28-04	Suspend	7-1-04
411-032-0000	5-28-04	Amend	7-1-04	411-070-0465	5-28-04	Amend(T)	7-1-04
411-032-0001	5-28-04	Amend	7-1-04	411-200-0010	3-24-04	Amend	5-1-04
411-032-0005	5-28-04	Amend	7-1-04	411-200-0010	6-23-04	Amend	8-1-04
411-032-0010	5-28-04	Amend	7-1-04	411-300-0100	6-1-04	Amend	7-1-04
411-032-0015	5-28-04	Amend	7-1-04	411-300-0110	12-11-03	Amend(T)	1-1-04
411-032-0020	5-28-04	Amend	7-1-04	411-300-0110	6-1-04	Amend	7-1-04
411-032-0044	5-28-04	Amend	7-1-04	411-300-0170	6-1-04	Amend	7-1-04
411-040-0000	6-1-04	Amend	7-1-04	411-300-0210	6-1-04	Amend	7-1-04
411-055-0000	2-4-04	Amend	3-1-04	411-300-0220	6-1-04	Amend	7-1-04
411-055-0000	4-1-04	Amend	5-1-04	411-320-0010	1-1-04	Adopt	2-1-04
411-055-0003	2-4-04	Amend	3-1-04	411-320-0020	1-1-04	Adopt	2-1-04
411-055-0003	4-1-04	Amend	5-1-04	411-320-0030	1-1-04	Adopt	2-1-04
411-055-0005	4-1-04	Amend	5-1-04	411-320-0040	1-1-04	Adopt	2-1-04
411-055-0010	4-1-04	Amend	5-1-04	411-320-0050	1-1-04	Adopt	2-1-04
411-055-0015	4-1-04	Amend	5-1-04	411-320-0060	1-1-04	Adopt	2-1-04
411-055-0019	4-1-04	Amend	5-1-04	411-320-0070	1-1-04	Adopt	2-1-04

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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	411-340-0130	4-30-04	Amend(T)	6-1-04
411-325-0110	1-1-04	Adopt	2-1-04	411-999-0030	6-1-04	Adopt(T)	6-1-04
411-325-0120	1-1-04	Adopt	2-1-04	413-010-0700	1-1-04	Amend	2-1-04
411-325-0130	1-1-04	Adopt	2-1-04	413-010-0705	1-1-04	Amend	2-1-04
411-325-0140	1-1-04	Adopt	2-1-04	413-010-0712	1-1-04	Amend	2-1-04
411-325-0150	1-1-04	Adopt	2-1-04	413-010-0714	1-1-04	Amend	2-1-04
411-325-0160	1-1-04	Adopt	2-1-04	413-010-0715	1-1-04	Amend	2-1-04
411-325-0170	1-1-04	Adopt	2-1-04	413-010-0716	1-1-04	Amend	2-1-04
411-325-0180	1-1-04	Adopt	2-1-04	413-010-0717	1-1-04	Amend	2-1-04
411-325-0190	1-1-04	Adopt	2-1-04	413-010-0718	1-1-04	Amend	2-1-04
411-325-0200	1-1-04	Adopt	2-1-04	413-010-0719	1-1-04	Repeal	2-1-04
411-325-0210	1-1-04	Adopt	2-1-04	413-010-0720	1-1-04	Amend	2-1-04
411-325-0220	1-1-04	Adopt	2-1-04	413-010-0721	1-1-04	Amend	2-1-04
411-325-0230	1-1-04	Adopt	2-1-04	413-010-0722	1-1-04	Amend	2-1-04
411-325-0240	1-1-04	Adopt	2-1-04	413-010-0723	1-1-04	Amend	2-1-04
411-325-0250	1-1-04	Adopt	2-1-04	413-010-0732	1-1-04	Amend	2-1-04
411-325-0260	1-1-04	Adopt	2-1-04	413-010-0735	1-1-04	Amend	2-1-04
411-325-0270	1-1-04	Adopt	2-1-04	413-010-0738	1-1-04	Amend	2-1-04
411-325-0280	1-1-04	Adopt	2-1-04	413-010-0740	1-1-04	Amend	2-1-04
411-325-0290	1-1-04	Adopt	2-1-04	413-010-0743	1-1-04	Amend	2-1-04
411-325-0300	1-1-04	Adopt	2-1-04	413-010-0745	1-1-04	Amend	2-1-04
411-325-0310	1-1-04	Adopt	2-1-04	413-010-0746	1-1-04	Amend	2-1-04
411-325-0320	1-1-04	Adopt	2-1-04	413-010-0748	1-1-04	Adopt	2-1-04
411-325-0330	1-1-04	Adopt	2-1-04	413-010-0750	1-1-04	Amend	2-1-04
411-325-0340	1-1-04	Adopt	2-1-04	413-040-0200	1-1-04	Amend	2-1-04
411-325-0350	1-1-04	Adopt	2-1-04	413-040-0205	1-1-04	Adopt	2-1-04
411-325-0360	1-1-04	Adopt	2-1-04	413-040-0210	1-1-04	Amend	2-1-04
411-325-0370	1-1-04	Adopt	2-1-04	413-040-0215	1-1-04	Adopt	2-1-04
411-325-0380	1-1-04	Adopt	2-1-04	413-040-0220	1-1-04	Repeal	2-1-04
411-325-0390	1-1-04	Adopt	2-1-04	413-040-0230	1-1-04	Amend	2-1-04
411-325-0400	1-1-04	Adopt	2-1-04	413-040-0240	1-1-04	Amend	2-1-04
411-325-0410	1-1-04	Adopt	2-1-04	413-040-0250	1-1-04	Am. & Ren.	2-1-04
411-325-0420	1-1-04	Adopt	2-1-04	413-040-0260	1-1-04	Amend	2-1-04
411-325-0430	1-1-04	Adopt	2-1-04	413-040-0265	1-1-04	Adopt	2-1-04

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413-040-0280	1-1-04	Amend	2-1-04	413-080-0045	3-1-04	Adopt(T)	4-1-04
413-040-0290	1-1-04	Amend	2-1-04	413-080-0050	3-1-04	Adopt(T)	4-1-04
413-040-0300	1-1-04	Amend	2-1-04	413-080-0055	3-1-04	Adopt(T)	4-1-04
413-040-0310	1-1-04	Amend	2-1-04	413-080-0060	3-1-04	Adopt(T)	4-1-04
413-040-0320	1-1-04	Amend	2-1-04	413-090-0010	4-1-04	Amend	5-1-04
413-040-0330	1-1-04	Amend	2-1-04	413-090-0010(T)	4-1-04	Repeal	5-1-04
413-050-0200	12-12-03	Amend	1-1-04	413-090-0160	4-1-04	Amend	5-1-04
413-050-0210	12-12-03	Amend	1-1-04	413-090-0160(T)	4-1-04	Repeal	5-1-04
413-050-0220	12-12-03	Amend	1-1-04	413-100-0020	2-10-04	Amend	3-1-04
413-050-0230	12-12-03	Amend	1-1-04	413-100-0030	2-10-04	Amend	3-1-04
413-050-0240	12-12-03	Amend	1-1-04	413-100-0030(T)	2-10-04	Repeal	3-1-04
413-050-0250	12-12-03	Amend	1-1-04	413-100-0040	2-10-04	Amend	3-1-04
413-050-0260	12-12-03	Amend	1-1-04	413-100-0040(T)	2-10-04	Repeal	3-1-04
413-050-0270	12-12-03	Amend	1-1-04	413-100-0050	2-10-04	Amend	3-1-04
413-050-0280	12-12-03	Amend	1-1-04	413-100-0050(T)	2-10-04	Repeal	3-1-04
413-050-0290	12-12-03	Amend	1-1-04	413-100-0070	2-10-04	Amend	3-1-04
413-050-0300	12-12-03	Amend	1-1-04	413-100-0070(T)	2-10-04	Repeal	3-1-04
413-050-0510	7-1-04	Amend	8-1-04	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
413-070-0937	1-1-04	Amend(T)	2-1-04	413-100-0400	7-1-04	Amend	8-1-04
413-070-0937	4-1-04	Amend	5-1-04	413-100-0410	7-1-04	Amend	8-1-04
413-070-0937(T)	4-1-04	Repeal	5-1-04	413-100-0420	7-1-04	Amend	8-1-04
413-070-0940	4-1-04	Amend	5-1-04	413-100-0430	7-1-04	Amend	8-1-04
413-070-0945	4-1-04	Amend	5-1-04	413-100-0440	7-1-04	Amend	8-1-04
413-070-0950	4-1-04	Amend	5-1-04	413-100-0450	7-1-04	Amend	8-1-04
413-070-0955	4-1-04	Amend	5-1-04	413-100-0460	7-1-04	Amend	8-1-04
413-070-0960	4-1-04	Amend	5-1-04	413-100-0480	7-1-04	Amend	8-1-04
413-070-0965	4-1-04	Amend	5-1-04	413-100-0490	7-1-04	Amend	8-1-04
413-070-0970	4-1-04	Amend	5-1-04	413-100-0500	7-1-04	Amend	8-1-04
413-070-0980	1-1-04	Amend(T)	2-1-04	413-100-0510	7-1-04	Amend	8-1-04
413-070-0980	4-1-04	Amend	5-1-04	413-100-0520	7-1-04	Amend	8-1-04
413-070-0980(T)	4-1-04	Repeal	5-1-04	413-100-0530	7-1-04	Amend	8-1-04
413-070-0981	1-1-04	Amend(T)	2-1-04	413-100-0540	7-1-04	Amend	8-1-04
413-070-0981	4-1-04	Amend	5-1-04	413-100-0550	7-1-04	Amend	8-1-04
413-070-0981(T)	1-1-04	Suspend	2-1-04	413-100-0560	7-1-04	Amend	8-1-04
413-070-0981(T)	4-1-04	Repeal	5-1-04	413-100-0580	7-1-04	Amend	8-1-04
413-070-0982	1-1-04	Adopt(T)	2-1-04	413-100-0590	7-1-04	Amend	8-1-04
413-070-0982	4-1-04	Adopt	5-1-04	413-100-0600	7-1-04	Amend	8-1-04
413-070-0982(T)	4-1-04	Repeal	5-1-04	413-100-0610	7-1-04	Amend	8-1-04

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413-110-0010	1-1-04	Amend	2-1-04	413-330-0098	12-17-03	Adopt(T)	2-1-04
413-110-0020	1-1-04	Amend	2-1-04	413-330-0098	6-1-04	Adopt	7-1-04
413-110-0030	1-1-04	Amend	2-1-04	413-330-0098(T)	6-1-04	Repeal	7-1-04
413-110-0040	1-1-04	Amend	2-1-04	413-330-0900	1-1-04	Amend(T)	2-1-04
413-110-0100	1-1-04	Amend	2-1-04	413-330-0900	6-1-04	Amend	7-1-04
413-110-0110	1-1-04	Amend	2-1-04	413-330-0900(T)	6-1-04	Repeal	7-1-04
413-110-0120	1-1-04	Amend	2-1-04	413-330-0910	1-1-04	Amend(T)	2-1-04
413-110-0130	1-1-04	Amend	2-1-04	413-330-0910	6-1-04	Amend	7-1-04
413-110-0140	1-1-04	Amend	2-1-04	413-330-0910(T)	6-1-04	Repeal	7-1-04
413-110-0300	1-1-04	Amend	2-1-04	413-330-0920	1-1-04	Amend(T)	2-1-04
413-110-0310	1-1-04	Amend	2-1-04	413-330-0920	6-1-04	Amend	7-1-04
413-110-0320	1-1-04	Amend	2-1-04	413-330-0920(T)	6-1-04	Repeal	7-1-04
413-110-0330	1-1-04	Amend	2-1-04	413-330-0930	1-1-04	Amend(T)	2-1-04
413-110-0340	1-1-04	Amend	2-1-04	413-330-0930	6-1-04	Amend	7-1-04
413-110-0350	1-1-04	Amend	2-1-04	413-330-0930(T)	6-1-04	Repeal	7-1-04
413-110-0360	1-1-04	Amend	2-1-04	413-330-0940	1-1-04	Amend(T)	2-1-04
413-120-0100	4-1-04	Amend	5-1-04	413-330-0940	6-1-04	Amend	7-1-04
413-120-0105	4-1-04	Amend	5-1-04	413-330-0940(T)	6-1-04	Repeal	7-1-04
413-120-0115	11-25-03	Amend(T)	1-1-04	413-330-0950	1-1-04	Amend(T)	2-1-04
413-120-0115	4-1-04	Amend	5-1-04	413-330-0950	6-1-04	Amend	7-1-04
413-120-0115(T)	4-1-04	Repeal	5-1-04	413-330-0950(T)	6-1-04	Repeal	7-1-04
413-120-0150	4-1-04	Amend	5-1-04	413-330-0960	1-1-04	Suspend	2-1-04
413-120-0155	4-1-04	Amend	5-1-04	413-330-0960	6-1-04	Amend	7-1-04
413-120-0165	4-1-04	Amend	5-1-04	413-330-0960(T)	6-1-04	Repeal	7-1-04
413-120-0175	11-25-03	Amend(T)	1-1-04	413-330-0970	1-1-04	Amend(T)	2-1-04
413-120-0175	4-1-04	Amend	5-1-04	413-330-0970	6-1-04	Amend	7-1-04
413-120-0175(T)	4-1-04	Repeal	5-1-04	413-330-0970(T)	6-1-04	Repeal	7-1-04
413-120-0500	1-1-04	Amend	2-1-04	413-330-0980	1-1-04	Amend(T)	2-1-04
413-120-0510	1-1-04	Amend	2-1-04	413-330-0980	6-1-04	Amend	7-1-04
413-120-0520	1-1-04	Amend	2-1-04	413-330-0980(T)	6-1-04	Repeal	7-1-04
413-120-0530	1-1-04	Amend	2-1-04	413-330-0990	1-1-04	Amend(T)	2-1-04
413-120-0540	1-1-04	Amend	2-1-04	413-330-0990	6-1-04	Amend	7-1-04
413-120-0550	1-1-04	Adopt	2-1-04	413-330-0990(T)	6-1-04	Repeal	7-1-04
413-130-0125	11-19-03	Amend(T)	1-1-04	413-330-1000	1-1-04	Amend(T)	2-1-04
413-130-0125	4-1-04	Amend	5-1-04	413-330-1000	6-1-04	Amend	7-1-04
413-130-0125(T)	4-1-04	Repeal	5-1-04	413-330-1000(T)	6-1-04	Repeal	7-1-04
413-130-0127	4-1-04	Adopt	5-1-04	413-330-1010	1-1-04	Amend(T)	2-1-04
413-130-0127(T)	4-1-04	Repeal	5-1-04	413-330-1010	6-1-04	Amend	7-1-04
413-210-0800	1-9-04	Amend	2-1-04	413-330-1010(T)	6-1-04	Repeal	7-1-04
413-210-0806	1-9-04	Amend	2-1-04	414-050-0010	12-28-03	Adopt(T)	2-1-04
413-210-0821	1-9-04	Amend	2-1-04	414-050-0010	3-28-04	Adopt	5-1-04
413-330-0085	12-17-03	Amend(T)	2-1-04	414-050-0010(T)	3-28-04	Repeal	5-1-04
413-330-0085	6-1-04	Amend	7-1-04	414-061-0000	12-7-03	Amend	1-1-04
413-330-0085(T)	6-1-04	Repeal	7-1-04	414-061-0010	12-7-03	Amend	1-1-04
413-330-0087	12-17-03	Amend(T)	2-1-04	414-061-0020	12-7-03	Amend	1-1-04
413-330-0087	6-1-04	Amend	7-1-04	414-061-0030	12-7-03	Amend	1-1-04
413-330-0087(T)	6-1-04	Repeal	7-1-04	414-061-0040	12-7-03	Amend	1-1-04
413-330-0090	12-17-03	Amend(T)	2-1-04	414-061-0050	12-7-03	Amend	1-1-04
413-330-0090	6-1-04	Amend	7-1-04	414-061-0060	12-7-03	Amend	1-1-04
413-330-0090(T)	6-1-04	Repeal	7-1-04	414-061-0070	12-7-03	Amend	1-1-04
413-330-0095	12-17-03	Amend(T)	2-1-04	414-061-0080	12-7-03	Amend	1-1-04
413-330-0095	6-1-04	Amend	7-1-04	414-061-0090	12-7-03	Amend	1-1-04
413-330-0095(T)	6-1-04	Repeal	7-1-04	414-061-0100	12-7-03	Amend	1-1-04
413-330-0097	12-17-03	Adopt(T)	2-1-04	414-061-0110	12-7-03	Amend	1-1-04
413-330-0097	6-1-04	Adopt	7-1-04	414-061-0120	12-7-03	Amend	1-1-04

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414-150-0080	12-28-03	Amend	2-1-04	416-030-0020	5-14-04	Repeal	6-1-04
414-150-0120	12-28-03	Amend	2-1-04	416-030-0030	5-14-04	Repeal	6-1-04
414-205-0000	12-28-03	Amend	2-1-04	416-030-0040	5-14-04	Repeal	6-1-04
414-300-0000	12-28-03	Amend	2-1-04	416-030-0050	5-14-04	Repeal	6-1-04
414-300-0005	12-28-03	Amend	2-1-04	416-030-0060	5-14-04	Repeal	6-1-04
414-300-0010	12-28-03	Amend	2-1-04	416-030-0070	5-14-04	Repeal	6-1-04
414-300-0180	12-28-03	Amend	2-1-04	416-030-0080	5-14-04	Repeal	6-1-04
414-300-0190	12-28-03	Amend	2-1-04	416-030-0090	5-14-04	Repeal	6-1-04
414-300-0200	12-28-03	Amend	2-1-04	416-030-0100	5-14-04	Repeal	6-1-04
414-300-0210	12-28-03	Amend	2-1-04	416-030-0110	5-14-04	Repeal	6-1-04
414-300-0280	12-28-03	Amend	2-1-04	416-105-0000	5-14-04	Adopt	6-1-04
414-300-0360	12-28-03	Amend	2-1-04	416-105-0010	5-14-04	Adopt	6-1-04
414-350-0010	12-28-03	Amend	2-1-04	416-105-0020	5-14-04	Adopt	6-1-04
414-350-0010	12-28-03	Amend	2-1-04	416-105-0030	5-14-04	Adopt	6-1-04
414-350-0020	12-28-03	Amend	2-1-04	416-105-0040	5-14-04	Adopt	6-1-04
414-350-0210	12-28-03	Amend	2-1-04	416-110-0000	5-14-04	Repeal	6-1-04
414-350-0235	12-28-03	Amend	2-1-04	416-110-0010	5-14-04	Repeal	6-1-04
414-500-0030	12-28-03	Amend	2-1-04	416-110-0020	5-14-04	Repeal	6-1-04
414-600-0000	12-7-03	Suspend	1-1-04	416-110-0030	5-14-04	Repeal	6-1-04
414-600-0000	3-28-04	Repeal	5-1-04	416-150-0000	5-14-04	Amend	6-1-04
414-600-0010	12-7-03	Suspend	1-1-04	416-150-0010	5-14-04	Amend	6-1-04
414-600-0010	3-28-04	Repeal	5-1-04	416-150-0020	5-14-04	Amend	6-1-04
414-600-0020	12-7-03	Suspend	1-1-04	416-150-0030	5-14-04	Amend	6-1-04
414-600-0020	3-28-04	Repeal	5-1-04	416-150-0040	5-14-04	Adopt	6-1-04
414-600-0030	12-7-03	Suspend	1-1-04	416-150-0050	5-14-04	Adopt	6-1-04
414-600-0030	3-28-04	Repeal	5-1-04	416-180-0000	5-14-04	Amend	6-1-04
414-600-0040	12-7-03	Suspend	1-1-04	416-180-0010	5-14-04	Amend	6-1-04
414-600-0040	3-28-04	Repeal	5-1-04	416-180-0020	5-14-04	Amend	6-1-04
414-600-0050	12-7-03	Suspend	1-1-04	416-180-0030	5-14-04	Amend	6-1-04
414-600-0050	3-28-04	Repeal	5-1-04	416-180-0040	5-14-04	Amend	6-1-04
414-600-0060	12-7-03	Suspend	1-1-04	416-180-0050	5-14-04	Amend	6-1-04
414-600-0060	3-28-04	Repeal	5-1-04	416-440-0010	5-14-04	Repeal	6-1-04
414-600-0070	12-7-03	Suspend	1-1-04	416-440-0030	5-14-04	Repeal	6-1-04
414-600-0070	3-28-04	Repeal	5-1-04	436-001-0000	4-1-04	Amend	4-1-04
414-600-0080	12-7-03	Suspend	1-1-04	436-001-0001	4-1-04	Amend	4-1-04
414-600-0080	3-28-04	Repeal	5-1-04	436-001-0003	4-1-04	Amend	4-1-04
414-600-0090	12-7-03	Suspend	1-1-04	436-001-0004	4-1-04	Amend	4-1-04
414-600-0090	3-28-04	Repeal	5-1-04	436-001-0005	4-1-04	Amend	4-1-04
414-600-0100	12-7-03	Suspend	1-1-04	436-001-0007	4-1-04	Amend	4-1-04
414-600-0100	3-28-04	Repeal	5-1-04	436-001-0008	4-1-04	Amend	4-1-04
414-700-0000	12-7-03	Adopt	1-1-04	436-001-0025	4-1-04	Repeal	4-1-04
414-700-0010	12-7-03	Adopt	1-1-04	436-001-0030	4-1-04	Amend	4-1-04
414-700-0020	12-7-03	Adopt	1-1-04	436-001-0045	4-1-04	Repeal	4-1-04
414-700-0030	12-7-03	Adopt	1-1-04	436-001-0055	4-1-04	Repeal	4-1-04
414-700-0040	12-7-03	Adopt	1-1-04	436-001-0065	4-1-04	Repeal	4-1-04
414-700-0050	12-7-03	Adopt	1-1-04	436-001-0090	4-1-04	Repeal	4-1-04
414-700-0060	12-7-03	Adopt	1-1-04	436-001-0105	4-1-04	Repeal	4-1-04
414-700-0070	12-7-03	Adopt	1-1-04	436-001-0110	4-1-04	Amend	4-1-04
414-700-0080	12-7-03	Adopt	1-1-04	436-001-0120	4-1-04	Repeal	4-1-04
414-700-0090	12-7-03	Adopt	1-1-04	436-001-0135	4-1-04	Repeal	4-1-04
416-001-0000	7-8-04	Amend	8-1-04	436-001-0140	4-1-04	Repeal	4-1-04
416-001-0005	7-8-04	Amend	8-1-04	436-001-0150	4-1-04	Amend	4-1-04
416-001-0015	7-8-04	Adopt	8-1-04	436-001-0155	4-1-04	Amend	4-1-04
416-001-0020	7-8-04	Adopt	8-1-04	436-001-0160	4-1-04	Amend	4-1-04
416-030-0000	5-14-04	Repeal	6-1-04	436-001-0170	4-1-04	Amend	4-1-04

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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	436-015-0008	6-29-04	Amend	7-1-04
436-001-0260	4-1-04	Amend	4-1-04	436-015-0030	1-1-04	Amend(T)	1-1-04
436-001-0265	1-1-04	Amend(T)	1-1-04	436-015-0030	6-29-04	Amend	7-1-04
436-001-0265	4-1-04	Amend	4-1-04	436-015-0040	6-29-04	Amend	7-1-04
436-001-0275	4-1-04	Amend	4-1-04	436-015-0050	1-1-04	Amend(T)	1-1-04
436-001-0285	4-1-04	Repeal	4-1-04	436-015-0050	6-29-04	Amend	7-1-04
436-001-0295	4-1-04	Repeal	4-1-04	436-015-0060	1-1-04	Amend(T)	1-1-04
436-001-0300	4-1-04	Adopt	4-1-04	436-015-0060	6-29-04	Amend	7-1-04
436-009-0003	4-1-04	Amend	4-1-04	436-015-0070	1-1-04	Amend(T)	1-1-04
436-009-0004	4-1-04	Amend	4-1-04	436-015-0070	6-29-04	Amend	7-1-04
436-009-0005	4-1-04	Amend	4-1-04	436-015-0090	1-1-04	Amend(T)	1-1-04
436-009-0008	1-1-04	Amend(T)	1-1-04	436-015-0090	6-29-04	Amend	7-1-04
436-009-0008	4-1-04	Amend	4-1-04	436-015-0130	6-29-04	Repeal	7-1-04
436-009-0010	4-1-04	Amend	4-1-04	436-030-0002	2-29-04	Amend	4-1-04
436-009-0015	1-1-04	Amend(T)	1-1-04	436-030-0003	1-1-04	Amend(T)	1-1-04
436-009-0015	4-1-04	Amend	4-1-04	436-030-0003	2-29-04	Amend	4-1-04
436-009-0020	4-1-04	Amend	4-1-04	436-030-0003(T)	2-29-04	Repeal	4-1-04
436-009-0022	4-1-04	Amend	4-1-04	436-030-0005	1-1-04	Amend(T)	1-1-04
436-009-0025	4-1-04	Amend	4-1-04	436-030-0005	2-29-04	Amend	4-1-04
436-009-0030	4-1-04	Amend	4-1-04	436-030-0005(T)	2-29-04	Repeal	4-1-04
436-009-0040	4-1-04	Amend	4-1-04	436-030-0007	1-1-04	Amend(T)	1-1-04
436-009-0050	4-1-04	Amend	4-1-04	436-030-0007	2-29-04	Amend	4-1-04
436-009-0060	1-1-04	Amend(T)	1-1-04	436-030-0007(T)	2-29-04	Repeal	4-1-04
436-009-0060	4-1-04	Amend	4-1-04	436-030-0009	1-1-04	Amend(T)	1-1-04
436-009-0070	1-1-04	Amend(T)	1-1-04	436-030-0009	2-29-04	Amend	4-1-04
436-009-0070	4-1-04	Amend	4-1-04	436-030-0009(T)	2-29-04	Repeal	4-1-04
436-009-0080	1-1-04	Amend(T)	1-1-04	436-030-0010	1-1-04	Amend(T)	1-1-04
436-009-0080	4-1-04	Amend	4-1-04	436-030-0010	2-29-04	Amend	4-1-04
436-009-0090	4-1-04	Amend	4-1-04	436-030-0010(T)	2-29-04	Repeal	4-1-04
436-010-0003	4-1-04	Amend	4-1-04	436-030-0015	2-29-04	Amend	4-1-04
436-010-0005	1-1-04	Amend(T)	1-1-04	436-030-0017	2-29-04	Amend	4-1-04
436-010-0005	4-1-04	Amend	4-1-04	436-030-0020	2-29-04	Amend	4-1-04
436-010-0008	1-1-04	Amend(T)	1-1-04	436-030-0023	2-29-04	Adopt	4-1-04
436-010-0008	4-1-04	Amend	4-1-04	436-030-0034	1-1-04	Amend(T)	1-1-04
436-010-0210	1-1-04	Amend(T)	1-1-04	436-030-0034	2-29-04	Amend	4-1-04
436-010-0210	4-1-04	Amend	4-1-04	436-030-0034(T)	2-29-04	Repeal	4-1-04
436-010-0220	1-1-04	Amend(T)	1-1-04	436-030-0035	1-1-04	Amend(T)	1-1-04
436-010-0220	4-1-04	Amend	4-1-04	436-030-0035	2-29-04	Amend	4-1-04
436-010-0230	1-1-04	Amend(T)	1-1-04	436-030-0035(T)	2-29-04	Repeal	4-1-04
436-010-0230	4-1-04	Amend	4-1-04	436-030-0036	2-29-04	Amend	4-1-04
436-010-0240	1-1-04	Amend(T)	1-1-04	436-030-0038	2-29-04	Amend	4-1-04
436-010-0240	4-1-04	Amend	4-1-04	436-030-0045	2-29-04	Am. & Ren.	4-1-04
436-010-0250	1-1-04	Amend(T)	1-1-04	436-030-0055	2-29-04	Amend	4-1-04
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436-030-0115	1-1-04	Amend(T)	1-1-04	436-050-0260	1-1-04	Amend	1-1-04
436-030-0115	2-29-04	Amend	4-1-04	436-050-0270	1-1-04	Amend	1-1-04
436-030-0115(T)	2-29-04	Repeal	4-1-04	436-050-0280	1-1-04	Amend	1-1-04
436-030-0125	1-1-04	Amend(T)	1-1-04	436-050-0290	1-1-04	Amend	1-1-04
436-030-0125	2-29-04	Amend	4-1-04	436-050-0400	1-1-04	Amend	1-1-04
436-030-0125(T)	2-29-04	Repeal	4-1-04	436-050-0440	1-1-04	Amend	1-1-04
436-030-0135	1-1-04	Amend(T)	1-1-04	436-050-0480	1-1-04	Adopt	1-1-04
436-030-0135	2-29-04	Amend	4-1-04	436-055-0008	1-1-04	Amend	1-1-04
436-030-0135(T)	2-29-04	Repeal	4-1-04	436-060-0005	1-1-04	Amend(T)	1-1-04
436-030-0145	1-1-04	Amend(T)	1-1-04	436-060-0005	2-29-04	Amend	4-1-04
436-030-0145	2-29-04	Amend	4-1-04	436-060-0008	1-1-04	Amend	1-1-04
436-030-0145(T)	2-29-04	Repeal	4-1-04	436-060-0008	2-29-04	Amend	4-1-04
436-030-0155	2-29-04	Amend	4-1-04	436-060-0009	2-29-04	Amend	4-1-04
436-030-0165	1-1-04	Amend(T)	1-1-04	436-060-0010	1-1-04	Amend(T)	1-1-04
436-030-0165	2-29-04	Amend	4-1-04	436-060-0010	2-29-04	Amend	4-1-04
436-030-0165(T)	2-29-04	Repeal	4-1-04	436-060-0010(T)	1-1-04	Suspend	1-1-04
436-030-0175	2-29-04	Amend	4-1-04	436-060-0015	2-29-04	Amend	4-1-04
436-030-0185	1-1-04	Amend(T)	1-1-04	436-060-0017	2-29-04	Amend	4-1-04
436-030-0185	2-29-04	Amend	4-1-04	436-060-0019	1-1-04	Amend(T)	1-1-04
436-030-0185(T)	2-29-04	Repeal	4-1-04	436-060-0019	2-29-04	Amend	4-1-04
436-030-0575	2-29-04	Amend	4-1-04	436-060-0019(T)	1-1-04	Suspend	1-1-04
436-030-0580	2-29-04	Amend	4-1-04	436-060-0020	1-1-04	Amend(T)	1-1-04
436-030-0581	2-29-04	Repeal	4-1-04	436-060-0020	2-29-04	Amend	4-1-04
436-035-0500	1-21-04	Amend(T)	3-1-04	436-060-0025	2-29-04	Amend	4-1-04
436-035-0500	4-19-04	Amend(T)	6-1-04	436-060-0030	1-1-04	Amend(T)	1-1-04
436-035-0500	7-15-04	Amend(T)	8-1-04	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
436-050-0005	1-1-04	Amend	1-1-04	436-060-0035(T)	1-1-04	Suspend	1-1-04
436-050-0006	1-1-04	Amend	1-1-04	436-060-0040	2-29-04	Amend	4-1-04
436-050-0008	1-1-04	Amend	1-1-04	436-060-0060	2-29-04	Amend	4-1-04
436-050-0020	1-1-04	Repeal	1-1-04	436-060-0095	1-1-04	Amend(T)	1-1-04
436-050-0040	1-1-04	Amend	1-1-04	436-060-0095	2-29-04	Amend	4-1-04
436-050-0050	1-1-04	Amend	1-1-04	436-060-0105	1-1-04	Amend(T)	1-1-04
436-050-0055	1-1-04	Amend	1-1-04	436-060-0105	2-29-04	Amend	4-1-04
436-050-0060	1-1-04	Amend	1-1-04	436-060-0135	2-29-04	Amend	4-1-04
436-050-0080	1-1-04	Amend	1-1-04	436-060-0140	1-1-04	Amend(T)	1-1-04
436-050-0090	1-1-04	Amend	1-1-04	436-060-0140	2-29-04	Amend	4-1-04
436-050-0100	1-1-04	Amend	1-1-04	436-060-0147	2-29-04	Amend	4-1-04
436-050-0110	1-1-04	Amend	1-1-04	436-060-0150	1-1-04	Amend(T)	1-1-04
436-050-0120	1-1-04	Amend	1-1-04	436-060-0150	2-29-04	Amend	4-1-04
436-050-0150	1-1-04	Amend	1-1-04	436-060-0180	2-29-04	Amend	4-1-04
436-050-0150(T)	1-1-04	Repeal	1-1-04	436-060-0190	2-29-04	Amend	4-1-04
436-050-0160	1-1-04	Amend	1-1-04	436-060-0195	2-29-04	Amend	4-1-04
436-050-0160(T)	1-1-04	Repeal	1-1-04	436-060-0200	2-29-04	Amend	4-1-04
436-050-0165	1-1-04	Adopt	1-1-04	436-060-0210	2-29-04	Repeal	4-1-04
436-050-0165(T)	1-1-04	Repeal	1-1-04	436-060-0500	2-29-04	Amend	4-1-04
436-050-0170	1-1-04	Amend	1-1-04	436-070-0008	1-1-04	Amend	1-1-04
436-050-0175	1-1-04	Amend	1-1-04	436-075-0008	1-1-04	Amend	1-1-04
436-050-0180	1-1-04	Amend	1-1-04	436-080-0001	1-1-04	Amend	1-1-04
436-050-0185	1-1-04	Amend	1-1-04	436-080-0002	1-1-04	Amend	1-1-04
436-050-0190	1-1-04	Amend	1-1-04	436-080-0003	1-1-04	Amend	1-1-04
436-050-0195	1-1-04	Amend	1-1-04	436-080-0005	1-1-04	Amend	1-1-04
436-050-0200	1-1-04	Amend	1-1-04	436-080-0006	1-1-04	Amend	1-1-04
436-050-0210	1-1-04	Amend	1-1-04	436-080-0010	1-1-04	Amend	1-1-04

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436-080-0030	1-1-04	Amend	1-1-04	437-003-1754	1-1-04	Adopt	2-1-04
436-080-0040	1-1-04	Amend	1-1-04	437-003-1760	1-1-04	Repeal	2-1-04
436-080-0050	1-1-04	Repeal	1-1-04	437-007-0220	6-7-04	Amend	7-1-04
436-080-0060	1-1-04	Amend	1-1-04	437-007-0600	6-7-04	Amend	7-1-04
436-080-0065	1-1-04	Amend	1-1-04	437-007-0605	6-7-04	Amend	7-1-04
436-080-0070	1-1-04	Amend	1-1-04	437-007-0615	6-7-04	Amend	7-1-04
436-080-0080	1-1-04	Amend	1-1-04	437-007-0650	6-7-04	Amend	7-1-04
436-085-0008	1-1-04	Amend	1-1-04	437-007-0655	6-7-04	Amend	7-1-04
436-105-0003	4-1-04	Amend(T)	5-1-04	437-007-0660	6-7-04	Amend	7-1-04
436-105-0003	8-1-04	Amend	8-1-04	437-007-0690	6-7-04	Amend	7-1-04
436-105-0003(T)	8-1-04	Repeal	8-1-04	437-007-0725	6-7-04	Amend	7-1-04
436-105-0500	4-1-04	Amend(T)	5-1-04	438-005-0040	9-1-04	Amend	8-1-04
436-105-0500	8-1-04	Amend	8-1-04	438-005-0050	9-1-04	Amend	8-1-04
436-105-0500(T)	8-1-04	Repeal	8-1-04	438-005-0055	9-1-04	Amend	8-1-04
436-105-0540	4-1-04	Amend(T)	5-1-04	438-006-0064	1-1-04	Adopt	1-1-04
436-105-0540	8-1-04	Amend	8-1-04	438-009-0010	9-1-04	Amend	8-1-04
436-105-0540(T)	8-1-04	Repeal	8-1-04	438-009-0015	9-1-04	Amend	8-1-04
436-105-0570	8-1-04	Repeal	8-1-04	438-012-0017	9-1-04	Adopt	8-1-04
436-120-0003	4-1-04	Amend	4-1-04	438-012-0018	9-1-04	Amend	8-1-04
436-120-0004	4-1-04	Amend	4-1-04	438-012-0020	9-1-04	Amend	8-1-04
436-120-0008	1-1-04	Amend(T)	1-1-04	438-012-0030	9-1-04	Amend	8-1-04
436-120-0008	4-1-04	Amend	4-1-04	438-012-0032	9-1-04	Amend	8-1-04
436-120-0320	4-1-04	Amend	4-1-04	438-012-0035	9-1-04	Amend	8-1-04
436-120-0340	4-1-04	Amend	4-1-04	438-012-0055	9-1-04	Amend	8-1-04
436-120-0350	4-1-04	Amend	4-1-04	438-012-0060	9-1-04	Amend	8-1-04
436-120-0360	4-1-04	Amend	4-1-04	438-012-0090	9-1-04	Amend	8-1-04
436-120-0410	4-1-04	Amend	4-1-04	438-012-0095	9-1-04	Amend	8-1-04
436-120-0500	4-1-04	Amend	4-1-04	438-012-0100	9-1-04	Amend	8-1-04
436-120-0710	4-1-04	Amend	4-1-04	438-012-0110	9-1-04	Adopt	8-1-04
436-120-0720	4-1-04	Amend	4-1-04	438-015-0011	9-1-04	Adopt	8-1-04
436-120-0830	4-1-04	Amend	4-1-04	438-015-0110	1-1-04	Adopt	1-1-04
436-120-0840	4-1-04	Amend	4-1-04	438-022-0005	9-1-04	Amend	8-1-04
436-120-0920	4-1-04	Repeal	4-1-04	438-022-0010	9-1-04	Amend	8-1-04
436-150-0008	1-1-04	Amend	1-1-04	440-020-0010	1-1-04	Adopt	2-1-04
436-160-0003	1-1-04	Amend	1-1-04	440-020-0015	1-1-04	Adopt	2-1-04
436-160-0310	1-1-04	Amend	1-1-04	440-055-0000	1-1-04	Repeal	2-1-04
436-160-0320	1-1-04	Amend	1-1-04	440-055-0005	1-1-04	Repeal	2-1-04
436-160-0340	1-1-04	Amend	1-1-04	440-055-0008	1-1-04	Adopt	2-1-04
436-160-0350	1-1-04	Amend	1-1-04	440-100-0010	1-1-04	Adopt	2-1-04
436-160-0360	1-1-04	Amend	1-1-04	441-001-0005	1-1-04	Adopt	2-1-04
437-001-0015	11-26-03	Amend	1-1-04	441-001-0010	1-1-04	Adopt	2-1-04
437-001-0096	11-26-03	Amend	1-1-04	441-001-0020	1-1-04	Adopt	2-1-04
437-001-0171	11-26-03	Amend	1-1-04	441-001-0030	1-1-04	Adopt	2-1-04
437-001-0203	11-26-03	Amend	1-1-04	441-001-0040	1-1-04	Adopt	2-1-04
437-001-0265	11-26-03	Amend	1-1-04	441-001-0050	1-1-04	Adopt	2-1-04
437-001-0270	11-26-03	Amend	1-1-04	441-002-0005	1-1-04	Adopt	2-1-04
437-001-0430	11-26-03	Amend	1-1-04	441-002-0010	1-1-04	Adopt	2-1-04
437-001-0700	11-26-03	Amend	1-1-04	441-002-0020	1-1-04	Adopt	2-1-04
437-001-0765	11-26-03	Amend	1-1-04	441-002-0030	1-1-04	Adopt	2-1-04
437-002-0120	7-1-04	Amend	5-1-04	441-002-0040	1-1-04	Adopt	2-1-04
437-002-0133	7-1-04	Repeal	5-1-04	441-035-0045	11-26-03	Amend(T)	1-1-04
437-002-0220	12-5-03	Amend	1-1-04	441-035-0045	5-19-04	Amend	7-1-04
437-002-0340	5-20-04	Amend	7-1-04	441-049-1001	11-26-03	Adopt(T)	1-1-04
437-003-0001	12-5-03	Amend	1-1-04	441-049-1001	5-19-04	Adopt	7-1-04
437-003-0001	1-1-04	Amend	2-1-04	441-049-1021	11-26-03	Amend(T)	1-1-04

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441-049-1031	11-26-03	Amend(T)	1-1-04	441-810-0200	1-1-04	Adopt	2-1-04
441-049-1031	5-19-04	Amend	7-1-04	441-810-0210	1-1-04	Adopt	2-1-04
441-049-1041	11-26-03	Amend(T)	1-1-04	441-810-0220	1-1-04	Adopt	2-1-04
441-049-1041	5-19-04	Amend	7-1-04	441-810-0230	1-1-04	Adopt	2-1-04
441-049-1051	11-26-03	Amend(T)	1-1-04	441-810-0240	1-1-04	Adopt	2-1-04
441-049-1051	5-19-04	Amend	7-1-04	441-810-0250	1-1-04	Adopt	2-1-04
441-065-0001	11-26-03	Adopt(T)	1-1-04	441-810-0260	1-1-04	Adopt	2-1-04
441-065-0001	5-19-04	Adopt	7-1-04	441-860-0020	1-1-04	Amend	2-1-04
441-065-0015	11-26-03	Amend(T)	1-1-04	441-860-0050	1-1-04	Amend	2-1-04
441-065-0015	5-19-04	Amend	7-1-04	441-880-0050	1-1-04	Adopt	2-1-04
441-065-0020	11-26-03	Amend(T)	1-1-04	443-015-0010	5-1-04	Amend	6-1-04
441-065-0020	5-19-04	Amend	7-1-04	445-050-0005	2-15-04	Amend	2-1-04
441-065-0035	11-26-03	Amend(T)	1-1-04	445-050-0020	2-15-04	Amend	2-1-04
441-065-0035	5-19-04	Amend	7-1-04	445-050-0030	2-15-04	Amend	2-1-04
441-065-0170	11-26-03	Amend(T)	1-1-04	445-050-0040	2-15-04	Amend	2-1-04
441-065-0170	5-19-04	Amend	7-1-04	445-050-0050	2-15-04	Amend	2-1-04
441-065-0180	11-26-03	Amend(T)	1-1-04	445-050-0060	2-15-04	Amend	2-1-04
441-065-0180	5-19-04	Amend	7-1-04	445-050-0080	2-15-04	Amend	2-1-04
441-065-0270	11-26-03	Amend(T)	1-1-04	445-050-0090	2-15-04	Amend	2-1-04
441-065-0270	5-19-04	Amend	7-1-04	445-050-0155	2-15-04	Amend	2-1-04
441-075-0020	11-26-03	Amend(T)	1-1-04	459-001-0000	6-15-04	Amend	7-1-04
441-075-0020	5-19-04	Amend	7-1-04	459-005-0001	11-20-03	Amend	1-1-04
441-095-0030	11-26-03	Amend(T)	1-1-04	459-005-0001	12-15-03	Amend	1-1-04
441-095-0030	5-19-04	Amend	7-1-04	459-005-0001	5-21-04	Amend(T)	5-1-04
441-175-0002	11-26-03	Adopt(T)	1-1-04	459-005-0001	6-15-04	Amend	7-1-04
441-175-0002	5-19-04	Adopt	7-1-04	459-005-0001(T)	11-20-03	Repeal	1-1-04
441-175-0010	1-1-04	Amend	2-1-04	459-005-0055	2-18-04	Amend	4-1-04
441-175-0015	11-26-03	Amend(T)	1-1-04	459-005-0250	1-1-04	Adopt	1-1-04
441-175-0015	5-19-04	Amend	7-1-04	459-005-0320	1-22-04	Repeal	3-1-04
441-175-0035	1-1-04	Repeal	2-1-04	459-007-0001	12-15-03	Amend	1-1-04
441-175-0055	1-1-04	Amend	2-1-04	459-007-0001(T)	12-15-03	Repeal	1-1-04
441-175-0060	11-26-03	Amend(T)	1-1-04	459-007-0003	12-15-03	Adopt	1-1-04
441-175-0060	5-19-04	Amend	7-1-04	459-007-0005	4-15-04	Adopt	5-1-04
441-175-0080	11-26-03	Amend(T)	1-1-04	459-007-0030	4-15-04	Repeal	5-1-04
441-175-0080	5-19-04	Amend	7-1-04	459-007-0040	12-15-03	Amend	1-1-04
441-175-0085	11-26-03	Amend(T)	1-1-04	459-007-0040(T)	12-15-03	Repeal	1-1-04
441-175-0085	5-19-04	Amend	7-1-04	459-007-0050	12-15-03	Amend	1-1-04
441-175-0100	11-26-03	Amend(T)	1-1-04	459-007-0050	6-15-04	Amend	7-1-04
441-175-0100	5-19-04	Amend	7-1-04	459-007-0050(T)	12-15-03	Repeal	1-1-04
441-175-0120	11-26-03	Amend(T)	1-1-04	459-007-0060	12-15-03	Amend	1-1-04
441-175-0120	5-19-04	Amend	7-1-04	459-007-0060(T)	12-15-03	Repeal	1-1-04
441-175-0130	11-26-03	Amend(T)	1-1-04	459-007-0070	4-1-04	Amend	1-1-04
441-175-0130	1-1-04	Amend	2-1-04	459-007-0080	4-1-04	Amend	1-1-04
441-175-0130	5-19-04	Amend	7-1-04	459-007-0090	4-1-04	Amend	1-1-04
441-175-0160	11-26-03	Amend(T)	1-1-04	459-007-0095	12-15-03	Adopt	1-1-04
441-175-0160	5-19-04	Amend	7-1-04	459-007-0100	12-15-03	Repeal	1-1-04
441-175-0165	11-26-03	Amend(T)	1-1-04	459-007-0210	4-15-04	Repeal	5-1-04
441-175-0165	5-19-04	Amend	7-1-04	459-007-0300	4-15-04	Amend	5-1-04
441-175-0171	11-26-03	Amend(T)	1-1-04	459-007-0510	4-15-04	Amend	5-1-04
441-175-0171	5-19-04	Amend	7-1-04	459-007-0520	4-15-04	Repeal	5-1-04
441-195-0010	5-19-04	Amend	7-1-04	459-009-0100	1-1-04	Amend	2-1-04
441-195-0020	5-19-04	Amend	7-1-04	459-009-0110	1-1-04	Repeal	2-1-04
441-195-0030	5-19-04	Amend	7-1-04	459-010-0055	7-1-04	Amend	7-1-04
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459-013-0280	7-1-04	Adopt(T)	5-1-04	461-120-0345	1-1-04	Amend	2-1-04
459-013-0300	12-15-03	Adopt	1-1-04	461-120-0345	1-1-04	Amend	2-1-04
459-017-0060	12-15-03	Amend(T)	1-1-04	461-120-0345	4-1-04	Amend	5-1-04
459-017-0060	6-15-04	Amend	7-1-04	461-120-0345	7-1-04	Amend	8-1-04
459-035-0050	1-1-04	Amend	1-1-04	461-120-0510	4-1-04	Amend	5-1-04
459-045-0001	11-20-03	Amend	1-1-04	461-120-0510	7-1-04	Amend	8-1-04
459-045-0001(T)	11-20-03	Repeal	1-1-04	461-120-0630	7-1-04	Amend	8-1-04
459-045-0030	7-1-04	Amend	7-1-04	461-125-0510	4-1-04	Amend	5-1-04
459-060-0001	12-15-03	Amend	1-1-04	461-125-0510	6-1-04	Amend(T)	7-1-04
459-060-0010	12-15-03	Amend	1-1-04	461-125-0600	4-1-04	Repeal	5-1-04
459-060-0020	12-15-03	Amend	1-1-04	461-125-0610	4-1-04	Repeal	5-1-04
459-070-0001	2-18-04	Adopt	4-1-04	461-125-0650	4-1-04	Repeal	5-1-04
459-070-0100	1-1-04	Adopt	2-1-04	461-125-0660	4-1-04	Repeal	5-1-04
459-070-0110	1-1-04	Adopt	2-1-04	461-125-0690	4-1-04	Repeal	5-1-04
459-070-0900	2-18-04	Adopt(T)	4-1-04	461-125-0890	4-1-04	Repeal	5-1-04
459-070-0900	5-19-04	Adopt	7-1-04	461-125-0910	4-1-04	Repeal	5-1-04
459-075-0010	2-18-04	Adopt	4-1-04	461-125-0930	4-1-04	Repeal	5-1-04
459-075-0030	1-1-04	Adopt	2-1-04	461-130-0327	7-1-04	Amend	8-1-04
459-075-0100	1-22-04	Adopt	3-1-04	461-130-0328	7-1-04	Amend	8-1-04
459-075-0150	2-18-04	Adopt	4-1-04	461-130-0330	7-1-04	Amend	8-1-04
459-080-0010	1-1-04	Adopt	1-1-04	461-135-0010	1-1-04	Amend	2-1-04
459-080-0100	1-22-04	Adopt	3-1-04	461-135-0085	7-1-04	Amend	8-1-04
459-080-0150	6-21-04	Adopt(T)	7-1-04	461-135-0170	7-1-04	Amend	8-1-04
459-080-0200	1-1-04	Adopt(T)	1-1-04	461-135-0180	1-1-04	Repeal	2-1-04
459-080-0200	5-19-04	Adopt	7-1-04	461-135-0200	7-1-04	Amend	8-1-04
459-080-0500	1-1-04	Adopt	1-1-04	461-135-0300	7-1-04	Amend	8-1-04
461-025-0311	1-1-04	Amend	2-1-04	461-135-0301	12-1-03	Amend(T)	1-1-04
461-101-0010	4-1-04	Amend	5-1-04	461-135-0301	4-1-04	Amend	5-1-04
461-101-0010	7-1-04	Amend	8-1-04	461-135-0301	5-1-04	Amend(T)	6-1-04
461-110-0210	7-1-04	Amend	8-1-04	461-135-0301(T)	4-1-04	Repeal	5-1-04
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461-110-0330	7-1-04	Amend	8-1-04	461-135-0320	7-1-04	Amend	8-1-04
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461-110-0350	4-1-04	Amend	5-1-04	461-135-0350	7-1-04	Amend	8-1-04
461-110-0390	4-1-04	Amend	5-1-04	461-135-0400	1-1-04	Amend	2-1-04
461-110-0630	4-1-04	Amend	5-1-04	461-135-0400	4-1-04	Amend	5-1-04
461-110-0630	7-1-04	Amend	8-1-04	461-135-0401	1-1-04	Amend	2-1-04
461-110-0750	4-1-04	Amend	5-1-04	461-135-0401	4-1-04	Amend	5-1-04
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461-115-0030	7-1-04	Amend	8-1-04	461-135-0700	4-15-04	Amend(T)	5-1-04
461-115-0430	7-1-04	Amend	8-1-04	461-135-0700	7-1-04	Amend	8-1-04
461-115-0530	7-1-04	Amend	8-1-04	461-135-0700(T)	1-1-04	Suspend	2-1-04
461-115-0651	7-1-04	Amend	8-1-04	461-135-0701	4-1-04	Amend	5-1-04
461-115-0705	1-1-04	Amend	2-1-04	461-135-0705	4-1-04	Amend	5-1-04
461-120-0120	1-1-04	Amend	2-1-04	461-135-0730	1-1-04	Amend	2-1-04
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461-120-0125	4-1-04	Amend	5-1-04	461-135-0730	7-1-04	Amend	8-1-04
461-120-0125	4-9-04	Amend(T)	5-1-04	461-135-0750	7-1-04	Amend	8-1-04
461-120-0125	5-11-04	Amend(T)	6-1-04	461-135-0760	7-1-04	Repeal	8-1-04
461-120-0125	7-1-04	Amend	8-1-04	461-135-0780	1-1-04	Amend	2-1-04
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461-120-0125(T)	5-11-04	Suspend	6-1-04	461-135-0830	1-1-04	Amend	2-1-04
461-120-0210	7-1-04	Amend	8-1-04	461-135-0832	1-1-04	Amend	2-1-04
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461-135-0847	1-1-04	Adopt	2-1-04	461-155-0070	7-1-04	Amend	8-1-04
461-135-1070	7-1-04	Amend(T)	8-1-04	461-155-0150	1-1-04	Amend	2-1-04
461-135-1102	7-1-04	Adopt	8-1-04	461-155-0150	1-1-04	Amend	2-1-04
461-135-1110	7-1-04	Amend	8-1-04	461-155-0150	4-1-04	Amend	5-1-04
461-135-1120	1-1-04	Amend	2-1-04	461-155-0210	4-1-04	Amend	5-1-04
461-135-1120	2-19-04	Amend(T)	4-1-04	461-155-0225	2-13-04	Amend(T)	3-1-04
461-135-1120	7-1-04	Amend	8-1-04	461-155-0225	4-1-04	Amend	5-1-04
461-135-1130	12-1-03	Amend(T)	1-1-04	461-155-0235	3-1-04	Amend(T)	4-1-04
461-135-1130	1-1-04	Amend	2-1-04	461-155-0235	4-1-04	Amend	5-1-04
461-135-1130	1-1-04	Amend	2-1-04	461-155-0250	1-1-04	Amend	2-1-04
461-135-1130	2-19-04	Amend(T)	4-1-04	461-155-0250	4-1-04	Amend	5-1-04
461-135-1130	4-1-04	Amend	5-1-04	461-155-0270	1-1-04	Amend	2-1-04
461-135-1130	4-1-04	Amend(T)	5-1-04	461-155-0290	4-1-04	Amend	5-1-04
461-135-1130	7-1-04	Amend	8-1-04	461-155-0291	4-1-04	Amend	5-1-04
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461-135-1230	4-1-04	Amend	5-1-04	461-155-0526	1-1-04	Amend	2-1-04
461-135-1235	4-1-04	Amend	5-1-04	461-155-0526	1-1-04	Amend	2-1-04
461-140-0040	7-1-04	Amend	8-1-04	461-155-0526	4-1-04	Amend	5-1-04
461-140-0110	7-1-04	Amend	8-1-04	461-155-0551	4-1-04	Amend	5-1-04
461-140-0120	4-1-04	Amend	5-1-04	461-155-0670	7-1-04	Amend	8-1-04
461-140-0120	7-1-04	Amend	8-1-04	461-155-0680	1-1-04	Amend	2-1-04
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461-145-0050	4-1-04	Amend	5-1-04	461-160-0140	7-1-04	Amend	8-1-04
461-145-0105	7-1-04	Adopt	8-1-04	461-160-0160	7-1-04	Amend	8-1-04
461-145-0120	7-1-04	Amend	8-1-04	461-160-0430	7-1-04	Amend	8-1-04
461-145-0150	4-1-04	Amend	5-1-04	461-160-0500	4-1-04	Amend	5-1-04
461-145-0190	4-1-04	Amend	5-1-04	461-160-0510	4-1-04	Repeal	5-1-04
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461-145-0250	7-1-04	Amend	8-1-04	461-160-0580	1-1-04	Amend	2-1-04
461-145-0280	7-1-04	Amend	8-1-04	461-160-0620	1-1-04	Amend	2-1-04
461-145-0320	4-1-04	Amend	5-1-04	461-160-0620	7-1-04	Amend	8-1-04
461-145-0360	4-1-04	Amend	5-1-04	461-165-0030	1-1-04	Amend	2-1-04
461-145-0360	7-1-04	Amend	8-1-04	461-165-0030	7-1-04	Amend	8-1-04
461-145-0410	7-1-04	Amend	8-1-04	461-165-0120	7-1-04	Amend	8-1-04
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461-145-0860	7-1-04	Amend	8-1-04	461-170-0010	1-1-04	Amend	2-1-04
461-145-0910	7-1-04	Amend	8-1-04	461-175-0200	1-1-04	Amend	2-1-04
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461-155-0020	1-1-04	Amend	2-1-04	461-180-0070	7-1-04	Amend	8-1-04
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461-180-0140	7-1-04	Amend	8-1-04	543-050-0030	1-1-04	Repeal	1-1-04
461-190-0110	1-1-04	Amend	2-1-04	543-050-0040	1-1-04	Repeal	1-1-04
461-190-0161	1-1-04	Amend	2-1-04	543-050-0050	1-1-04	Repeal	1-1-04
461-190-0191	1-1-04	Repeal	2-1-04	543-060-0000	1-1-04	Adopt	1-1-04
461-190-0211	1-1-04	Amend	2-1-04	543-060-0010	1-1-04	Adopt	1-1-04
461-190-0360	1-1-04	Amend	2-1-04	543-060-0020	1-1-04	Adopt	1-1-04
461-193-0560	1-1-04	Amend	2-1-04	543-060-0030	1-1-04	Adopt	1-1-04
461-195-0501	1-1-04	Amend	2-1-04	543-060-0040	1-1-04	Adopt	1-1-04
461-195-0531	4-1-04	Amend	5-1-04	543-060-0060	1-1-04	Adopt	1-1-04
461-195-0551	4-1-04	Amend	5-1-04	571-020-0120	5-17-04	Amend	6-1-04
461-195-0561	1-1-04	Amend	2-1-04	571-020-0180	5-17-04	Amend	6-1-04
461-195-0601	4-1-04	Amend	5-1-04	571-024-0005	7-19-04	Amend	8-1-04
461-195-0621	4-1-04	Amend	5-1-04	571-060-0005	7-1-04	Amend	6-1-04
461-195-0621	7-1-04	Amend	8-1-04	571-060-0005	7-1-04	Amend	8-1-04
462-110-0030	4-8-04	Amend	5-1-04	573-001-0000	4-5-04	Amend	5-1-04
462-120-0020	3-3-04	Amend	4-1-04	573-001-0015	4-5-04	Amend	5-1-04
462-120-0040	4-8-04	Amend	5-1-04	573-020-0000	4-5-04	Repeal	5-1-04
462-140-0070	4-8-04	Amend	5-1-04	573-020-0005	4-5-04	Repeal	5-1-04
462-140-0410	4-8-04	Amend	5-1-04	573-020-0010	4-5-04	Repeal	5-1-04
462-140-0420	4-8-04	Amend	5-1-04	573-020-0015	4-5-04	Repeal	5-1-04
462-140-0480	4-8-04	Amend	5-1-04	573-020-0021	4-5-04	Repeal	5-1-04
462-170-0010	4-8-04	Amend	5-1-04	573-020-0024	4-5-04	Repeal	5-1-04
462-170-0030	4-8-04	Amend	5-1-04	573-020-0025	4-5-04	Repeal	5-1-04
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462-180-0010	4-8-04	Amend	5-1-04	573-020-0035	4-5-04	Repeal	5-1-04
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471-010-0051	1-4-04	Amend	2-1-04	573-020-0060	4-5-04	Repeal	5-1-04
471-010-0054	1-4-04	Amend	2-1-04	573-020-0065	4-5-04	Repeal	5-1-04
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471-030-0045	12-14-03	Amend	1-1-04	573-020-0110	4-5-04	Repeal	5-1-04
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573-070-0067	4-5-04	Amend	5-1-04	580-020-0006	12-1-03	Adopt(T)	1-1-04
573-070-0068	4-5-04	Amend	5-1-04	580-020-0006	4-8-04	Adopt	5-1-04
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573-075-0040	4-5-04	Adopt	5-1-04	580-040-0040	6-15-04	Amend	7-1-04
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573-075-0060	4-5-04	Adopt	5-1-04	580-040-0301	6-9-04	Adopt	7-1-04
573-075-0070	4-5-04	Adopt	5-1-04	580-040-0302	6-9-04	Adopt	7-1-04
573-075-0080	4-5-04	Adopt	5-1-04	580-040-0303	6-9-04	Adopt	7-1-04
573-075-0090	4-5-04	Adopt	5-1-04	580-040-0304	6-9-04	Adopt	7-1-04
573-075-0100	4-5-04	Adopt	5-1-04	580-040-0305	6-9-04	Adopt	7-1-04
573-075-0110	4-5-04	Adopt	5-1-04	580-040-0306	6-9-04	Adopt	7-1-04
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578-041-0030	6-9-04	Amend	7-1-04	580-050-0240	6-9-04	Adopt(T)	7-1-04
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580-010-0030	12-3-03	Amend	1-1-04	580-050-0260	6-9-04	Adopt(T)	7-1-04
580-010-0031	12-3-03	Amend	1-1-04	580-050-0270	6-9-04	Adopt(T)	7-1-04
580-010-0033	12-3-03	Amend	1-1-04	580-050-0280	6-9-04	Adopt(T)	7-1-04
580-010-0035	12-3-03	Amend	1-1-04	580-050-0290	6-9-04	Adopt(T)	7-1-04
580-010-0037	12-3-03	Amend	1-1-04	580-050-0300	6-9-04	Adopt(T)	7-1-04
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580-050-0330	6-9-04	Adopt(T)	7-1-04	582-030-0008	3-12-04	Amend	4-1-04
580-050-0340	6-9-04	Adopt(T)	7-1-04	582-030-0010	3-12-04	Amend	4-1-04
581-001-0120	3-5-04	Adopt(T)	4-1-04	582-030-0020	3-12-04	Amend	4-1-04
581-015-0062	5-11-04	Amend(T)	6-1-04	582-030-0025	3-12-04	Adopt	4-1-04
581-015-0062	7-9-04	Amend	8-1-04	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
581-015-0126	1-15-04	Amend	2-1-04	582-070-0010	3-9-04	Amend	4-1-04
581-015-0900	1-15-04	Amend	2-1-04	582-070-0020	12-31-03	Amend	2-1-04
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
581-015-0940	1-15-04	Amend	2-1-04	582-085-0020	12-31-03	Amend	2-1-04
581-015-0960	1-15-04	Amend	2-1-04	582-090-0010	4-2-04	Amend	5-1-04
581-015-0964	1-15-04	Amend	2-1-04	582-090-0020	4-2-04	Amend	5-1-04
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581-015-0970	1-15-04	Amend	2-1-04	582-090-0050	4-2-04	Repeal	5-1-04
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581-015-0980	1-15-04	Amend	2-1-04	583-030-0020	2-11-04	Amend(T)	3-1-04
581-015-0990	1-15-04	Amend	2-1-04	583-030-0021	1-14-04	Amend	2-1-04
581-020-0331	3-15-04	Amend(T)	4-1-04	583-030-0030	1-14-04	Amend	2-1-04
581-021-0023	1-15-04	Adopt	2-1-04	583-030-0035	2-11-04	Amend(T)	3-1-04
581-022-1730	1-15-04	Amend	2-1-04	583-030-0041	2-11-04	Amend(T)	3-1-04
581-023-0103	4-15-04	Repeal	5-1-04	583-030-0042	2-11-04	Amend(T)	3-1-04
581-023-0104	3-15-04	Adopt	4-1-04	583-030-0045	1-14-04	Amend	2-1-04
581-045-0001	1-1-04	Amend	2-1-04	583-030-0046	2-11-04	Amend(T)	3-1-04
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581-045-0018	1-1-04	Amend	2-1-04	583-050-0031	5-14-04	Amend	6-1-04
581-045-0019	1-1-04	Amend	2-1-04	584-017-0042	3-17-04	Adopt(T)	5-1-04
581-045-0023	1-1-04	Amend	2-1-04	584-036-0017	3-17-04	Amend	5-1-04
581-045-0026	1-1-04	Amend	2-1-04	584-036-0062	5-14-04	Amend	6-1-04
581-045-0032	1-1-04	Amend	2-1-04	584-036-0067	3-17-04	Adopt(T)	5-1-04
581-045-0065	1-1-04	Amend	2-1-04	584-040-0005	3-17-04	Amend(T)	5-1-04
581-045-0068	1-1-04	Amend	2-1-04	584-060-0171	5-14-04	Amend	6-1-04
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582-010-0005	12-31-03	Amend	2-1-04	584-100-0006	3-17-04	Adopt	5-1-04
582-010-0010	12-31-03	Amend	2-1-04	584-100-0011	3-17-04	Adopt	5-1-04
582-010-0015	12-31-03	Amend	2-1-04	584-100-0016	3-17-04	Adopt	5-1-04
582-010-0020	12-31-03	Amend	2-1-04	584-100-0021	3-17-04	Adopt	5-1-04
582-010-0025	12-31-03	Amend	2-1-04	584-100-0023	3-17-04	Adopt	5-1-04
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582-020-0005	1-30-04	Adopt	3-1-04	584-100-0026	5-14-04	Amend(T)	6-1-04
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582-020-0040	1-30-04	Amend	3-1-04	584-100-0041	3-17-04	Adopt	5-1-04
582-020-0050	1-30-04	Amend	3-1-04	584-100-0046	3-17-04	Adopt	5-1-04
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582-020-0070	1-30-04	Amend	3-1-04	584-100-0056	3-17-04	Adopt	5-1-04
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582-020-0090	1-30-04	Amend	3-1-04	584-100-0066	3-17-04	Adopt	5-1-04
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582-020-0120	1-30-04	Amend	3-1-04	584-100-0096	3-17-04	Adopt	5-1-04
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589-020-0220	11-20-03	Adopt(T)	1-1-04	603-052-0345	2-13-04	Repeal	3-1-04
603-001-0001	2-10-04	Amend	3-1-04	603-052-0400	2-13-04	Repeal	3-1-04
603-013-0600	2-13-04	Amend	3-1-04	603-052-0425	2-13-04	Repeal	3-1-04
603-013-0602	2-13-04	Amend	3-1-04	603-052-0810	2-13-04	Repeal	3-1-04
603-013-0604	2-13-04	Amend	3-1-04	603-052-1000	2-13-04	Repeal	3-1-04
603-013-0616	2-13-04	Amend	3-1-04	603-052-1010	2-13-04	Repeal	3-1-04
603-014-0016	1-23-04	Amend	3-1-04	603-052-1235	6-22-04	Adopt(T)	8-1-04
603-016-0471	2-13-04	Repeal	3-1-04	603-052-1238	7-2-04	Adopt(T)	8-1-04
603-016-0476	2-13-04	Repeal	3-1-04	603-054-0010	2-13-04	Repeal	3-1-04
603-016-0481	2-13-04	Repeal	3-1-04	603-054-0027	3-12-04	Adopt	4-1-04
603-016-0486	2-13-04	Repeal	3-1-04	603-057-0006	12-23-03	Amend	2-1-04
603-016-0491	2-13-04	Repeal	3-1-04	603-057-0006(T)	12-23-03	Repeal	2-1-04
603-016-0496	2-13-04	Repeal	3-1-04	603-059-0020	7-1-04	Amend	5-1-04
603-016-0500	2-13-04	Repeal	3-1-04	603-076-0051	5-5-04	Adopt	6-1-04
603-016-0505	2-13-04	Repeal	3-1-04	603-076-0052	5-5-04	Adopt	6-1-04
603-016-0510	2-13-04	Repeal	3-1-04	603-095-0140	1-23-03	Amend	3-1-04
603-027-0105	6-28-04	Amend	8-1-04	603-095-2900	6-17-04	Adopt	8-1-04
603-027-0170	6-28-04	Amend	8-1-04	603-095-2920	6-17-04	Adopt	8-1-04
603-027-0180	6-28-04	Amend	8-1-04	603-095-2940	6-17-04	Adopt	8-1-04
603-027-0206	6-28-04	Amend	8-1-04	603-095-2960	6-17-04	Adopt	8-1-04
603-027-0220	6-28-04	Amend	8-1-04	603-095-3400	6-17-04	Adopt	8-1-04
603-027-0395	3-26-04	Amend	5-1-04	603-095-3420	6-17-04	Adopt	8-1-04
603-027-0405	3-26-04	Repeal	5-1-04	603-095-3440	6-17-04	Adopt	8-1-04
603-027-0410	6-28-04	Amend	8-1-04	603-095-3460	6-17-04	Adopt	8-1-04
603-027-0635	6-28-04	Amend	8-1-04	603-095-3500	6-17-04	Adopt	8-1-04
603-027-0640	3-26-04	Amend	5-1-04	603-095-3520	6-17-04	Adopt	8-1-04
603-027-0640	6-28-04	Amend	8-1-04	603-095-3540	6-17-04	Adopt	8-1-04
603-027-0680	6-28-04	Amend	8-1-04	603-095-3560	6-17-04	Adopt	8-1-04
603-027-0700	6-28-04	Amend	8-1-04	603-095-3600	1-12-04	Adopt	2-1-04
603-051-0801	2-13-04	Repeal	3-1-04	603-095-3620	1-12-04	Adopt	2-1-04
603-051-0802	2-13-04	Repeal	3-1-04	603-095-3640	1-12-04	Adopt	2-1-04
603-051-0810	2-13-04	Repeal	3-1-04	603-095-3660	1-12-04	Adopt	2-1-04
603-051-0812	2-13-04	Repeal	3-1-04	603-095-3700	1-23-04	Adopt	3-1-04
603-051-0814	2-13-04	Repeal	3-1-04	603-095-3720	1-23-04	Adopt	3-1-04
603-051-0816	2-13-04	Repeal	3-1-04	603-095-3740	1-23-04	Adopt	3-1-04
603-051-0818	2-13-04	Repeal	3-1-04	603-095-3760	1-23-04	Adopt	3-1-04
603-051-0819	2-13-04	Repeal	3-1-04	603-095-3800	3-22-04	Adopt	5-1-04
603-051-0821	2-13-04	Repeal	3-1-04	603-095-3820	3-22-04	Adopt	5-1-04
603-051-0823	2-13-04	Repeal	3-1-04	603-095-3840	3-22-04	Adopt	5-1-04
603-051-0825	2-13-04	Repeal	3-1-04	603-095-3860	3-22-04	Adopt	5-1-04
603-051-0827	2-13-04	Repeal	3-1-04	603-095-3900	6-17-04	Adopt	8-1-04
603-051-0829	2-13-04	Repeal	3-1-04	603-095-3920	6-17-04	Adopt	8-1-04
603-051-0855	6-1-04	Amend	7-1-04	603-095-3940	6-17-04	Adopt	8-1-04
603-051-0856	6-1-04	Amend	7-1-04	603-095-3960	6-17-04	Adopt	8-1-04
603-051-0857	6-1-04	Amend	7-1-04	604-030-0010	1-1-04	Adopt	1-1-04
603-051-0858	6-1-04	Amend	7-1-04	604-030-0020	1-1-04	Adopt	1-1-04
603-051-0859	6-1-04	Amend	7-1-04	604-030-0030	1-1-04	Adopt	1-1-04
603-051-0950	2-13-04	Repeal	3-1-04	604-030-0040	1-1-04	Adopt	1-1-04
603-052-0325	2-13-04	Repeal	3-1-04	605-030-0010	1-15-04	Adopt	2-1-04
603-052-0326	2-13-04	Repeal	3-1-04	605-030-0020	1-15-04	Adopt	2-1-04
603-052-0327	2-13-04	Repeal	3-1-04	605-030-0030	1-15-04	Adopt	2-1-04
603-052-0331	2-13-04	Repeal	3-1-04	605-030-0040	1-15-04	Adopt	2-1-04
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607-030-0010	1-1-04	Adopt	1-1-04	629-065-0100	5-4-04	Repeal	6-1-04
607-030-0020	1-1-04	Adopt	1-1-04	629-065-0200	5-4-04	Amend	6-1-04
607-030-0030	1-1-04	Adopt	1-1-04	629-065-0210	5-4-04	Adopt	6-1-04
607-030-0040	1-1-04	Adopt	1-1-04	629-065-0220	5-4-04	Adopt	6-1-04
608-010-0015	1-2-04	Amend	2-1-04	629-065-0400	5-4-04	Amend	6-1-04
608-010-0020	1-2-04	Amend	2-1-04	629-065-0410	5-4-04	Adopt	6-1-04
608-030-0010	1-2-04	Adopt	2-1-04	629-065-0500	5-4-04	Repeal	6-1-04
608-030-0020	1-2-04	Adopt	2-1-04	629-670-0300	2-10-04	Amend	3-1-04
608-030-0030	1-2-04	Adopt	2-1-04	629-670-0310	2-10-04	Amend	3-1-04
608-030-0040	1-2-04	Adopt	2-1-04	629-670-0315	2-10-04	Amend	3-1-04
611-030-0010	1-15-04	Adopt	2-1-04	629-672-0210	2-10-04	Amend	3-1-04
611-030-0020	1-15-04	Adopt	2-1-04	629-672-0220	2-10-04	Amend	3-1-04
611-030-0030	1-15-04	Adopt	2-1-04	629-672-0310	2-10-04	Amend	3-1-04
611-030-0040	1-15-04	Adopt	2-1-04	635-001-0005	6-2-04	Amend	7-1-04
617-010-0090	1-16-04	Adopt	2-1-04	635-001-0105	1-1-04	Amend	1-1-04
617-030-0010	1-16-04	Adopt	2-1-04	635-001-0301	5-1-04	Amend	6-1-04
617-030-0020	1-16-04	Adopt	2-1-04	635-003-0003	5-1-04	Amend	6-1-04
617-030-0030	1-16-04	Adopt	2-1-04	635-003-0003	5-1-04	Amend	6-1-04
617-030-0040	1-16-04	Adopt	2-1-04	635-003-0076	5-1-04	Amend	6-1-04
620-010-0050	1-14-04	Adopt	2-1-04	635-003-0076	5-5-04	Amend(T)	6-1-04
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623-030-0020	12-8-03	Adopt	1-1-04	635-003-0076	7-16-04	Amend(T)	8-1-04
623-030-0030	12-8-03	Adopt	1-1-04	635-003-0076(T)	6-19-04	Suspend	8-1-04
624-010-0000	1-16-04	Amend	2-1-04	635-003-0076(T)	7-1-04	Suspend	8-1-04
624-010-0020	1-16-04	Amend	2-1-04	635-003-0076(T)	7-8-04	Suspend	8-1-04
624-010-0030	1-16-04	Amend	2-1-04	635-003-0076(T)	7-16-04	Suspend	8-1-04
624-010-0050	1-16-04	Adopt	2-1-04	635-004-0005	1-1-04	Amend	1-1-04
624-010-0060	1-16-04	Adopt	2-1-04	635-004-0018	1-1-04	Amend	1-1-04
624-030-0010	1-16-04	Adopt	2-1-04	635-004-0027	1-1-04	Amend(T)	1-1-04
624-030-0020	1-16-04	Adopt	2-1-04	635-004-0036	1-1-04	Amend	1-1-04
624-030-0030	1-16-04	Adopt	2-1-04	635-005-0045	12-1-03	Amend(T)	1-1-04
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629-001-0045	2-10-04	Amend	3-1-04	635-006-0140	1-1-04	Amend	1-1-04
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629-023-0150	5-6-04	Repeal	6-1-04	635-006-0215	5-1-04	Amend	6-1-04
629-023-0160	5-6-04	Repeal	6-1-04	635-006-0232	2-1-04	Amend	2-1-04
629-023-0165	5-6-04	Repeal	6-1-04	635-006-0850	1-1-04	Amend	1-1-04
629-023-0170	5-6-04	Repeal	6-1-04	635-006-0850	3-23-04	Amend	5-1-04
629-023-0180	5-6-04	Repeal	6-1-04	635-006-0910	1-31-04	Amend(T)	3-1-04

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635-006-0910(T)	3-23-04	Repeal	5-1-04	635-023-0125	6-16-04	Amend(T)	7-1-04
635-006-1085	7-12-04	Amend(T)	8-1-04	635-023-0126	6-30-04	Adopt(T)	8-1-04
635-007-0605	5-1-04	Amend	6-1-04	635-023-0130	5-1-04	Adopt	6-1-04
635-007-0655	5-1-04	Amend	6-1-04	635-023-0135	4-24-04	Adopt(T)	6-1-04
635-007-0910	5-1-04	Amend	6-1-04	635-039-0080	1-1-04	Amend	1-1-04
635-010-0015	5-1-04	Amend	6-1-04	635-039-0090	11-21-03	Amend(T)	1-1-04
635-011-0100	1-1-04	Amend	1-1-04	635-039-0090	1-1-04	Amend	1-1-04
635-011-0101	1-1-04	Amend	1-1-04	635-039-0090	1-1-04	Amend	1-1-04
635-013-0003	1-1-04	Amend	1-1-04	635-04-0033	1-1-04	Amend	1-1-04
635-013-0003	5-1-04	Amend	6-1-04	635-041-0060	12-1-03	Amend(T)	1-1-04
635-013-0004	1-1-04	Amend	1-1-04	635-041-0065	1-1-04	Amend(T)	2-1-04
635-014-0080	1-1-04	Amend	1-1-04	635-041-0065	2-2-04	Amend(T)	3-1-04
635-014-0090	12-11-03	Amend(T)	1-1-04	635-041-0065	3-10-04	Amend(T)	4-1-04
635-014-0090	1-1-04	Amend	1-1-04	635-041-0090	5-4-04	Adopt(T)	6-1-04
635-014-0090	1-1-04	Amend(T)	1-1-04	635-041-0090	5-11-04	Amend(T)	6-1-04
635-014-0090	7-1-04	Amend(T)	8-1-04	635-041-0090	5-19-04	Amend(T)	7-1-04
635-014-0090(T)	12-11-03	Suspend	1-1-04	635-041-0090	5-26-04	Amend(T)	7-1-04
635-014-0090(T)	1-1-04	Repeal	1-1-04	635-041-0095	6-17-04	Adopt(T)	8-1-04
635-016-0080	1-1-04	Amend	1-1-04	635-041-0095	6-23-04	Amend(T)	8-1-04
635-016-0090	1-1-04	Amend	1-1-04	635-041-0095	6-30-04	Amend(T)	8-1-04
635-017-0080	1-1-04	Amend	1-1-04	635-041-0095	7-14-04	Amend(T)	8-1-04
635-017-0090	1-1-04	Amend	1-1-04	635-041-0095(T)	6-23-04	Suspend	8-1-04
635-017-0090	5-1-04	Amend	6-1-04	635-041-0095(T)	6-30-04	Suspend	8-1-04
635-017-0090	5-28-04	Amend(T)	7-1-04	635-041-0095(T)	7-14-04	Suspend	8-1-04
635-017-0090	7-12-04	Amend(T)	8-1-04	635-042-0022	2-13-04	Adopt	3-1-04
635-017-0090(T)	7-12-04	Suspend	8-1-04	635-042-0022	3-1-04	Amend(T)	4-1-04
635-018-0080	1-1-04	Amend	1-1-04	635-042-0022	3-3-04	Amend(T)	4-1-04
635-018-0090	1-1-04	Amend	1-1-04	635-042-0022	3-8-04	Amend(T)	4-1-04
635-018-0090	4-1-04	Amend(T)	5-1-04	635-042-0022	3-10-04	Amend(T)	4-1-04
635-019-0080	1-1-04	Amend	1-1-04	635-042-0022	3-15-04	Amend(T)	4-1-04
635-019-0090	1-1-04	Amend	1-1-04	635-042-0022	3-18-04	Amend(T)	5-1-04
635-019-0090	5-13-04	Amend(T)	6-1-04	635-042-0022	3-23-04	Amend(T)	5-1-04
635-019-0090	5-22-04	Amend(T)	7-1-04	635-042-0022	3-25-04	Amend(T)	5-1-04
635-019-0090	6-19-04	Amend(T)	8-1-04	635-042-0022	3-29-04	Amend(T)	5-1-04
635-021-0080	1-1-04	Amend	1-1-04	635-042-0025	6-30-04	Amend(T)	8-1-04
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635-023-0080	1-1-04	Amend	1-1-04	635-042-0130	3-18-04	Amend(T)	5-1-04
635-023-0090	1-1-04	Amend	1-1-04	635-042-0135	1-1-04	Amend(T)	2-1-04
635-023-0090	2-1-04	Amend(T)	3-1-04	635-042-0135	2-2-04	Amend(T)	3-1-04
635-023-0090	5-1-04	Amend(T)	6-1-04	635-042-0145	2-13-04	Amend	3-1-04
635-023-0090	6-25-04	Amend(T)	7-1-04	635-042-0145	3-12-04	Amend(T)	4-1-04
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635-023-0090	7-3-04	Amend(T)	8-1-04	635-042-0145	4-12-04	Amend(T)	5-1-04
635-023-0090	7-11-04	Amend(T)	8-1-04	635-042-0145	5-6-04	Amend(T)	6-1-04
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635-044-0005	5-1-04	Amend	6-1-04	635-067-0034	1-1-04	Amend	1-1-04
635-044-0060	5-1-04	Amend	6-1-04	635-067-0041	1-1-04	Adopt	1-1-04
635-044-0200	5-1-04	Amend	6-1-04	635-068-0000	1-19-04	Amend	1-1-04
635-045-0000	1-1-04	Amend	1-1-04	635-068-0000	6-16-04	Amend	8-1-04
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635-046-0030	5-1-04	Amend	6-1-04	635-069-0000	6-16-04	Amend	8-1-04
635-048-0030	5-1-04	Amend	6-1-04	635-070-0000	12-24-03	Amend(T)	2-1-04
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635-050-0045	5-1-04	Amend	6-1-04	635-070-0000	4-1-04	Amend	1-1-04
635-050-0045	7-13-04	Amend	8-1-04	635-070-0000	6-16-04	Amend	8-1-04
635-050-0070	7-13-04	Amend	8-1-04	635-070-0005	2-2-04	Amend(T)	3-1-04
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635-050-0090	7-13-04	Amend	8-1-04	635-071-0000	1-1-04	Amend	1-1-04
635-050-0100	7-13-04	Amend	8-1-04	635-071-0000	1-13-04	Amend(T)	2-1-04
635-050-0110	7-13-04	Amend	8-1-04	635-071-0000	6-16-04	Amend	8-1-04
635-050-0120	7-13-04	Amend	8-1-04	635-071-0005	1-13-04	Amend(T)	2-1-04
635-050-0130	7-13-04	Amend	8-1-04	635-072-0000	1-1-04	Amend	1-1-04
635-050-0140	7-13-04	Amend	8-1-04	635-073-0000	12-24-03	Amend(T)	2-1-04
635-050-0150	7-13-04	Amend	8-1-04	635-073-0000	2-2-04	Amend	1-1-04
635-050-0170	7-13-04	Amend	8-1-04	635-073-0000	6-16-04	Amend	8-1-04
635-050-0180	5-1-04	Amend	6-1-04	635-073-0060	12-24-03	Amend(T)	2-1-04
635-050-0180	7-13-04	Amend	8-1-04	635-073-0065	6-16-04	Adopt	8-1-04
635-050-0183	7-13-04	Amend	8-1-04	635-073-0070	1-1-04	Amend	1-1-04
635-050-0189	7-13-04	Amend	8-1-04	635-073-0070	6-16-04	Amend	8-1-04
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635-060-0005	1-1-04	Amend	1-1-04	635-078-0008	1-1-04	Amend	1-1-04
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635-060-0046	1-1-04	Amend	1-1-04	635-090-0140	7-13-04	Amend	8-1-04
635-060-0055	4-1-04	Amend	1-1-04	635-090-0150	7-13-04	Amend	8-1-04
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635-067-0000	6-16-04	Amend	8-1-04	635-500-1930	12-15-03	Amend	1-1-04
635-067-0015	1-1-04	Amend	1-1-04	635-500-3120	12-15-03	Amend	1-1-04
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635-500-6030	12-15-03	Adopt	1-1-04	658-030-0030	12-4-03	Adopt	1-1-04
635-500-6040	12-15-03	Adopt	1-1-04	660-001-0000	5-7-04	Amend	6-1-04
635-500-6050	12-15-03	Adopt	1-1-04	660-001-0310	5-17-04	Am. & Ren.	7-1-04
635-500-6060	12-15-03	Adopt	1-1-04	660-001-0315	5-17-04	Am. & Ren.	7-1-04
641-030-0010	1-15-04	Adopt	1-1-04	660-002-0010	5-7-04	Amend	6-1-04
641-030-0020	1-15-04	Adopt	1-1-04	660-003-0025	5-7-04	Amend	6-1-04
641-030-0030	1-15-04	Adopt	1-1-04	660-004-0005	5-7-04	Amend	6-1-04
642-010-0020	1-15-04	Amend	1-1-04	660-004-0010	5-7-04	Amend	6-1-04
642-030-0010	1-15-04	Adopt	1-1-04	660-004-0018	5-7-04	Amend	6-1-04
642-030-0020	1-15-04	Adopt	1-1-04	660-004-0020	5-7-04	Amend	6-1-04
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643-010-0030	1-16-04	Adopt	3-1-04	660-004-0035	5-7-04	Amend	6-1-04
643-030-0010	1-16-04	Adopt	3-1-04	660-004-0040	5-7-04	Amend	6-1-04
643-030-0020	1-16-04	Adopt	3-1-04	660-006-0015	5-7-04	Amend	6-1-04
643-030-0030	1-16-04	Adopt	3-1-04	660-006-0025	5-7-04	Amend	6-1-04
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644-010-0005	1-8-04	Amend	2-1-04	660-008-0005	5-7-04	Amend	6-1-04
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644-010-0015	1-8-04	Amend	2-1-04	660-012-0055	5-7-04	Amend	6-1-04
644-010-0020	1-8-04	Amend	2-1-04	660-012-0070	5-7-04	Amend	6-1-04
644-010-0025	1-8-04	Amend	2-1-04	660-013-0030	5-7-04	Amend	6-1-04
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645-030-0020	1-16-04	Adopt	2-1-04	660-014-0030	5-17-04	Amend	7-1-04
645-030-0030	1-16-04	Adopt	2-1-04	660-014-0040	5-17-04	Amend	7-1-04
645-030-0040	1-16-04	Adopt	2-1-04	660-016-0005	5-7-04	Amend	6-1-04
646-010-0030	1-16-04	Adopt	2-1-04	660-016-0010	5-7-04	Amend	6-1-04
646-030-0010	1-16-04	Adopt	2-1-04	660-017-0000	5-7-04	Amend	6-1-04
646-030-0020	1-16-04	Adopt	2-1-04	660-018-0005	5-7-04	Amend	6-1-04
646-030-0020	4-8-04	Amend	5-1-04	660-018-0150	5-7-04	Adopt	6-1-04
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647-010-0010	6-1-04	Amend	6-1-04	660-023-0090	5-7-04	Amend	6-1-04
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656-030-0020	1-1-04	Adopt	1-1-04	660-025-0150	5-7-04	Amend	6-1-04
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664-015-0010	1-15-04	Adopt	1-1-04	690-205-0005	6-15-04	Amend	7-1-04
664-015-0020	1-15-04	Adopt	1-1-04	690-205-0175	6-15-04	Amend	7-1-04
664-015-0030	1-15-04	Adopt	1-1-04	690-205-0200	6-15-04	Amend	7-1-04
668-010-0010	1-15-04	Amend	2-1-04	690-205-0210	6-15-04	Amend	7-1-04
668-030-0010	1-15-04	Adopt	2-1-04	690-240-0005	6-15-04	Amend	7-1-04
668-030-0020	1-15-04	Adopt	2-1-04	690-240-0010	6-15-04	Amend	7-1-04
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669-010-0015	1-13-04	Amend	2-1-04	690-240-0340	6-15-04	Amend	7-1-04
669-010-0020	1-13-04	Amend	2-1-04	690-240-0375	6-15-04	Amend	7-1-04
669-010-0025	1-13-04	Amend	2-1-04	690-240-0395	6-15-04	Amend	7-1-04
669-010-0030	1-13-04	Amend	2-1-04	690-240-0525	6-15-04	Amend	7-1-04
669-010-0040	1-13-04	Amend	2-1-04	690-310-0040	6-15-04	Amend	7-1-04
669-010-0050	1-13-04	Adopt	2-1-04	690-310-0060	6-15-04	Amend	7-1-04
669-030-0010	1-13-04	Adopt	2-1-04	690-310-0150	6-15-04	Amend	7-1-04
669-030-0020	1-13-04	Adopt	2-1-04	690-310-0160	6-15-04	Amend	7-1-04
669-030-0030	1-13-04	Adopt	2-1-04	690-310-0180	6-15-04	Amend	7-1-04
669-030-0040	1-13-04	Adopt	2-1-04	690-310-0220	6-15-04	Amend	7-1-04
670-010-0020	1-15-04	Amend	2-1-04	690-340-0030	6-15-04	Amend	7-1-04
670-030-0010	1-15-04	Adopt	2-1-04	690-380-2130	3-17-04	Amend	5-1-04
670-030-0020	1-15-04	Adopt	2-1-04	690-380-8000	3-17-04	Amend	5-1-04
670-030-0030	1-15-04	Adopt	2-1-04	690-380-8002	3-17-04	Adopt	5-1-04
679-010-0000	1-20-04	Amend	3-1-04	690-380-8004	3-17-04	Adopt	5-1-04
679-010-0010	1-20-04	Amend	3-1-04	690-380-8010	3-17-04	Amend	5-1-04
679-010-0030	1-20-04	Amend	3-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
679-010-0050	1-20-04	Adopt	3-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
679-010-0060	1-20-04	Adopt	3-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
679-030-0010	1-20-04	Adopt	3-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
679-030-0020	1-20-04	Adopt	3-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
679-030-0030	1-20-04	Adopt	3-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
679-030-0040	1-20-04	Adopt	3-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
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690-003-0020	6-15-04	Repeal	7-1-04	690-502-0215	6-15-04	Adopt	7-1-04
690-011-0220	6-15-04	Repeal	7-1-04	695-020-0020	1-26-04	Amend	3-1-04
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690-014-0020	7-1-04	Amend	7-1-04	695-020-0056	4-12-04	Repeal	5-1-04
690-014-0030	7-1-04	Amend	7-1-04	695-020-0057	4-12-04	Repeal	5-1-04
690-014-0050	7-1-04	Amend	7-1-04	695-020-0058	4-12-04	Repeal	5-1-04
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690-014-0090	7-1-04	Adopt	7-1-04	695-020-0093	1-26-04	Amend	3-1-04
690-014-0100	7-1-04	Amend	7-1-04	695-020-0094	1-26-04	Amend	3-1-04
690-014-0110	7-1-04	Adopt	7-1-04	695-020-0095	1-26-04	Amend	3-1-04
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690-014-0170	7-1-04	Amend	7-1-04	695-020-0097	1-26-04	Amend	3-1-04
690-014-0190	7-1-04	Amend	7-1-04	695-020-0098	1-26-04	Adopt	3-1-04
690-014-0200	7-1-04	Repeal	7-1-04	695-040-0020	4-12-04	Adopt	5-1-04
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690-026-0015	6-15-04	Repeal	7-1-04	695-040-0060	4-12-04	Adopt	5-1-04
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731-050-0020	6-24-04	Adopt	8-1-04	734-051-0440	3-1-04	Am. & Ren.	4-1-04
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732-005-0031	7-15-04	Amend(T)	8-1-04	734-051-0480	3-1-04	Repeal	4-1-04
732-005-0051	7-15-04	Amend(T)	8-1-04	734-060-0025	1-1-04	Amend	1-1-04
732-010-0010	7-15-04	Amend(T)	8-1-04	734-071-0010	5-20-04	Amend	7-1-04
732-010-0035	7-15-04	Amend(T)	8-1-04	734-071-0050	5-20-04	Amend	7-1-04
734-017-0005	1-20-04	Amend	3-1-04	734-082-0080	2-25-04	Adopt	4-1-04
734-020-0010	5-6-04	Amend	6-1-04	735-010-0070	1-1-04	Amend	1-1-04
734-051-0010	3-1-04	Amend	4-1-04	735-018-0020	12-15-03	Amend	1-1-04
734-051-0020	3-1-04	Amend	4-1-04	735-018-0070	12-15-03	Amend	1-1-04
734-051-0030	3-1-04	Am. & Ren.	4-1-04	735-018-0080	12-15-03	Amend	1-1-04
734-051-0040	3-1-04	Amend	4-1-04	735-018-0110	12-15-03	Amend	1-1-04
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734-051-0060	3-1-04	Am. & Ren.	4-1-04	735-018-0120	6-24-04	Adopt	8-1-04
734-051-0070	3-1-04	Amend	4-1-04	735-018-0120(T)	6-24-04	Repeal	8-1-04
734-051-0080	3-1-04	Amend	4-1-04	735-020-0000	5-24-04	Amend	7-1-04
734-051-0085	3-1-04	Adopt	4-1-04	735-020-0020	5-24-04	Amend	7-1-04
734-051-0090	3-1-04	Am. & Ren.	4-1-04	735-020-0070	1-1-04	Adopt(T)	1-1-04
734-051-0100	3-1-04	Am. & Ren.	4-1-04	735-020-0070	5-24-04	Adopt	7-1-04
734-051-0105	3-1-04	Adopt	4-1-04	735-020-0070(T)	5-24-04	Repeal	7-1-04
734-051-0110	3-1-04	Am. & Ren.	4-1-04	735-020-0080	1-1-04	Adopt(T)	1-1-04
734-051-0120	3-1-04	Am. & Ren.	4-1-04	735-020-0080	6-24-04	Adopt	8-1-04
734-051-0130	3-1-04	Repeal	4-1-04	735-020-0080(T)	6-24-04	Repeal	8-1-04
734-051-0140	3-1-04	Repeal	4-1-04	735-024-0010	1-1-04	Amend(T)	1-1-04
734-051-0150	3-1-04	Repeal	4-1-04	735-024-0010	5-24-04	Amend	7-1-04
734-051-0160	3-1-04	Repeal	4-1-04	735-024-0010	6-24-04	Amend	8-1-04
734-051-0170	3-1-04	Repeal	4-1-04	735-024-0010(T)	5-24-04	Repeal	7-1-04
734-051-0180	3-1-04	Repeal	4-1-04	735-024-0020	1-1-04	Amend(T)	1-1-04
734-051-0190	3-1-04	Am. & Ren.	4-1-04	735-024-0020	6-24-04	Amend	8-1-04
734-051-0200	3-1-04	Am. & Ren.	4-1-04	735-024-0020(T)	6-24-04	Repeal	8-1-04
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734-051-0220	3-1-04	Repeal	4-1-04	735-024-0045	6-24-04	Adopt	8-1-04
734-051-0230	3-1-04	Am. & Ren.	4-1-04	735-024-0045(T)	6-24-04	Repeal	8-1-04
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734-051-0240	3-1-04	Am. & Ren.	4-1-04	735-032-0010	5-24-04	Amend	7-1-04
734-051-0250	3-1-04	Am. & Ren.	4-1-04	735-032-0010(T)	5-24-04	Repeal	7-1-04
734-051-0260	3-1-04	Am. & Ren.	4-1-04	735-034-0010	1-1-04	Amend(T)	1-1-04
734-051-0270	3-1-04	Am. & Ren.	4-1-04	735-034-0010	5-24-04	Amend	7-1-04
734-051-0280	3-1-04	Am. & Ren.	4-1-04	735-034-0010(T)	5-24-04	Repeal	7-1-04
734-051-0290	3-1-04	Am. & Ren.	4-1-04	735-040-0050	1-1-04	Amend(T)	1-1-04
734-051-0300	3-1-04	Am. & Ren.	4-1-04	735-040-0050	6-24-04	Amend	8-1-04
734-051-0310	3-1-04	Am. & Ren.	4-1-04	735-040-0050(T)	6-24-04	Repeal	8-1-04
734-051-0320	3-1-04	Am. & Ren.	4-1-04	735-040-0055	1-1-04	Amend(T)	1-1-04
734-051-0330	3-1-04	Repeal	4-1-04	735-040-0055	6-24-04	Amend	8-1-04
734-051-0340	3-1-04	Repeal	4-1-04	735-040-0055(T)	6-24-04	Repeal	8-1-04
734-051-0350	3-1-04	Repeal	4-1-04	735-040-0061	1-1-04	Amend(T)	1-1-04
734-051-0360	3-1-04	Am. & Ren.	4-1-04	735-040-0061	6-24-04	Amend	8-1-04
734-051-0370	3-1-04	Am. & Ren.	4-1-04	735-040-0061(T)	6-24-04	Repeal	8-1-04
734-051-0380	3-1-04	Am. & Ren.	4-1-04	735-040-0080	1-1-04	Amend(T)	1-1-04
734-051-0390	3-1-04	Am. & Ren.	4-1-04	735-040-0080	6-24-04	Amend	8-1-04
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735-040-0097	1-1-04	Amend(T)	1-1-04	735-061-0190	1-15-04	Repeal	2-1-04
735-040-0097	6-24-04	Amend	8-1-04	735-061-0200	1-15-04	Repeal	2-1-04
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735-040-0100	1-1-04	Amend(T)	1-1-04	735-062-0020	1-1-04	Amend	1-1-04
735-040-0100	6-24-04	Amend	8-1-04	735-062-0020	3-25-04	Amend	5-1-04
735-040-0100(T)	6-24-04	Repeal	8-1-04	735-062-0020(T)	3-25-04	Repeal	5-1-04
735-048-0000	7-15-04	Amend	8-1-04	735-062-0030	1-1-04	Amend(T)	1-1-04
735-048-0020	7-15-04	Amend	8-1-04	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	735-062-0050	7-1-04	Amend	8-1-04
735-050-0064	1-1-04	Amend	1-1-04	735-062-0075	1-1-04	Amend	1-1-04
735-050-0070	1-1-04	Amend	1-1-04	735-062-0095	1-1-04	Amend	1-1-04
735-050-0080	1-1-04	Amend	1-1-04	735-062-0110	1-1-04	Amend	1-1-04
735-050-0120	1-1-04	Amend	1-1-04	735-062-0300	7-1-04	Adopt	8-1-04
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735-060-0030	11-18-03	Amend	1-1-04	735-062-0340	7-1-04	Adopt	8-1-04
735-060-0040	11-18-03	Amend	1-1-04	735-062-0350	7-1-04	Adopt	8-1-04
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735-060-0160	11-18-03	Am. & Ren.	1-1-04	735-150-0070	5-24-04	Amend	7-1-04
735-060-0170	11-18-03	Am. & Ren.	1-1-04	735-150-0070(T)	5-24-04	Repeal	7-1-04
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735-170-0120	1-1-04	Adopt	1-1-04	738-090-0030	2-17-04	Amend	4-1-04
735-170-0140	1-1-04	Adopt	1-1-04	738-090-0040	2-17-04	Amend	4-1-04
735-174-0000	1-1-04	Amend	1-1-04	738-100-0010	2-17-04	Amend	4-1-04
735-174-0010	1-1-04	Amend	1-1-04	738-110-0010	2-17-04	Repeal	4-1-04
735-174-0020	1-1-04	Amend	1-1-04	738-110-0020	2-17-04	Repeal	4-1-04
735-174-0030	1-1-04	Amend	1-1-04	738-110-0030	2-17-04	Repeal	4-1-04
735-174-0040	1-1-04	Adopt(T)	1-1-04	738-110-0040	2-17-04	Repeal	4-1-04
735-176-0000	1-15-04	Amend	2-1-04	738-110-0050	2-17-04	Repeal	4-1-04
735-176-0010	1-15-04	Amend	2-1-04	738-125-0010	5-24-04	Adopt	7-1-04
735-176-0015	1-15-04	Adopt	2-1-04	738-125-0015	5-24-04	Adopt	7-1-04
735-176-0018	1-15-04	Adopt	2-1-04	738-125-0020	5-24-04	Adopt	7-1-04
735-176-0020	1-15-04	Amend	2-1-04	738-125-0025	5-24-04	Adopt	7-1-04
735-176-0030	1-15-04	Amend	2-1-04	738-125-0030	5-24-04	Adopt	7-1-04
735-176-0040	1-15-04	Amend	2-1-04	738-125-0035	5-24-04	Adopt	7-1-04
736-001-0000	1-15-04	Amend	2-1-04	738-125-0040	5-24-04	Adopt	7-1-04
736-002-0020	1-15-04	Adopt	2-1-04	738-125-0045	5-24-04	Adopt	7-1-04
736-002-0030	1-15-04	Adopt	2-1-04	738-125-0050	5-24-04	Adopt	7-1-04
736-002-0040	1-15-04	Adopt	2-1-04	738-125-0055	5-24-04	Adopt	7-1-04
736-002-0060	1-15-04	Adopt	2-1-04	740-060-0030	1-1-04	Amend(T)	1-1-04
736-002-0070	1-15-04	Adopt	2-1-04	740-060-0030	6-29-04	Amend	8-1-04
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736-006-0110	5-5-04	Amend	6-1-04	740-060-0055	6-29-04	Adopt	8-1-04
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736-006-0125	5-5-04	Amend	6-1-04	740-100-0015	1-15-04	Adopt	2-1-04
736-006-0130	5-5-04	Am. & Ren.	6-1-04	740-100-0060	1-1-04	Amend	1-1-04
736-006-0135	5-5-04	Am. & Ren.	6-1-04	740-100-0070	1-1-04	Amend	1-1-04
736-006-0140	5-5-04	Adopt	6-1-04	740-100-0080	1-1-04	Amend	1-1-04
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740-130-0010	1-1-04	Repeal	1-1-04	741-020-0030	5-20-04	Adopt	7-1-04
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740-130-0030	1-1-04	Repeal	1-1-04	741-020-0050	5-20-04	Adopt	7-1-04
740-130-0040	1-1-04	Repeal	1-1-04	741-020-0060	5-20-04	Adopt	7-1-04
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740-130-0080	1-1-04	Repeal	1-1-04	741-025-0020	5-20-04	Adopt	7-1-04
740-130-0090	1-1-04	Repeal	1-1-04	741-025-0025	5-20-04	Adopt	7-1-04
740-135-0010	1-1-04	Repeal	1-1-04	741-025-0030	5-20-04	Adopt	7-1-04
740-135-0020	1-1-04	Repeal	1-1-04	741-025-0040	5-20-04	Adopt	7-1-04
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801-010-0075	1-1-04	Amend	2-1-04	808-003-0112	2-1-04	Adopt	3-1-04
801-010-0080	1-1-04	Amend	2-1-04	808-003-0125	2-1-04	Amend	3-1-04
801-010-0085	1-1-04	Amend	2-1-04	808-003-0130	2-1-04	Amend	3-1-04
801-010-0110	1-1-04	Amend	2-1-04	808-004-0210	1-1-04	Adopt	2-1-04
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812-002-0540(T)	12-5-03	Repeal	1-1-04	812-010-0430	12-5-03	Amend	1-1-04
812-003-0000	12-5-03	Amend	1-1-04	812-010-0440	12-5-03	Amend	1-1-04
812-003-0000	7-1-04	Amend	4-1-04	812-010-0440	6-1-04	Amend	7-1-04
812-003-0000	9-1-04	Amend	8-1-04	812-010-0460	12-5-03	Amend	1-1-04
812-003-0000(T)	12-5-03	Repeal	1-1-04	812-010-0460	6-1-04	Amend	7-1-04
812-003-0015	2-2-04	Amend	3-1-04	812-010-0500	12-5-03	Amend	1-1-04
812-003-0015	3-1-04	Amend	4-1-04	812-010-0500	6-1-04	Amend	7-1-04
812-003-0015	6-1-04	Amend	7-1-04	812-010-0510	12-5-03	Adopt	1-1-04
812-003-0020	12-5-03	Amend	1-1-04	812-010-0510	6-1-04	Amend	7-1-04
812-003-0020(T)	12-5-03	Repeal	1-1-04	812-010-0520	12-5-03	Adopt	1-1-04
812-003-0025	12-5-03	Amend	1-1-04	812-010-0520	6-1-04	Amend	7-1-04
812-003-0025	9-1-04	Amend	8-1-04	813-003-0005	5-20-04	Adopt(T)	7-1-04
812-003-0025(T)	12-5-03	Repeal	1-1-04	813-003-0010	5-20-04	Adopt(T)	7-1-04
812-003-0050	9-1-04	Amend	8-1-04	813-003-0020	5-20-04	Adopt(T)	7-1-04
812-004-0110	12-5-03	Adopt	1-1-04	813-003-0030	5-20-04	Adopt(T)	7-1-04
812-004-0110	1-1-04	Amend(T)	2-1-04	813-003-0040	5-20-04	Adopt(T)	7-1-04
812-004-0110	3-1-04	Amend	4-1-04	813-003-0050	5-20-04	Adopt(T)	7-1-04
812-004-0110	6-1-04	Amend	7-1-04	813-003-0060	5-20-04	Adopt(T)	7-1-04
812-004-0110(T)	3-1-04	Repeal	4-1-04	813-003-0070	5-20-04	Adopt(T)	7-1-04
812-004-0210	12-5-03	Adopt	1-1-04	813-300-0010	12-19-03	Amend	2-1-04
812-004-0250	1-1-04	Amend(T)	2-1-04	813-300-0120	12-19-03	Amend	2-1-04
812-004-0250	3-1-04	Amend	4-1-04	813-310-0005	6-28-04	Adopt	8-1-04
812-004-0250(T)	3-1-04	Repeal	4-1-04	813-310-0010	6-28-04	Adopt	8-1-04
812-004-0320	12-5-03	Amend	1-1-04	813-310-0015	6-28-04	Adopt	8-1-04
812-004-0340	12-5-03	Amend	1-1-04	813-310-0020	6-28-04	Adopt	8-1-04
812-004-0400	12-5-03	Amend	1-1-04	813-310-0025	6-28-04	Adopt	8-1-04
812-004-0440	1-1-04	Amend(T)	2-1-04	813-310-0030	6-28-04	Adopt	8-1-04
812-004-0440	3-1-04	Amend	4-1-04	813-310-0035	6-28-04	Adopt	8-1-04
812-004-0440(T)	3-1-04	Repeal	4-1-04	813-310-0040	6-28-04	Adopt	8-1-04
812-004-0535	12-5-03	Amend	1-1-04	813-310-0045	6-28-04	Adopt	8-1-04
812-004-0535	3-1-04	Amend	4-1-04	813-310-0050	6-28-04	Adopt	8-1-04
812-004-0540	3-1-04	Amend	4-1-04	813-310-0055	6-28-04	Adopt	8-1-04
812-004-0550	3-1-04	Amend	4-1-04	813-310-0060	6-28-04	Adopt	8-1-04
812-004-0600	9-1-04	Amend	8-1-04	813-310-0065	6-28-04	Adopt	8-1-04
812-005-0005	12-5-03	Amend	1-1-04	813-310-0070	6-28-04	Adopt	8-1-04
812-005-0005	9-1-04	Amend	8-1-04	813-310-0075	6-28-04	Adopt	8-1-04
812-006-0020	12-5-03	Amend	1-1-04	813-310-0080	6-28-04	Adopt	8-1-04
812-008-0050	3-1-04	Amend	4-1-04	813-310-0085	6-28-04	Adopt	8-1-04
812-009-0100	3-1-04	Amend	4-1-04	813-310-0090	6-28-04	Adopt	8-1-04
812-009-0120	3-1-04	Amend	4-1-04	813-310-0095	6-28-04	Adopt	8-1-04
812-010-0020	12-5-03	Amend	1-1-04	813-310-0100	6-28-04	Adopt	8-1-04
812-010-0020	6-1-04	Amend	7-1-04	813-310-0105	6-28-04	Adopt	8-1-04
812-010-0030	12-5-03	Amend	1-1-04	813-310-0110	6-28-04	Adopt	8-1-04
812-010-0050	12-5-03	Adopt	1-1-04	813-350-0030	4-8-04	Amend	5-1-04

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817-001-0000	7-1-04	Repeal	8-1-04	817-090-0055	7-1-04	Amend	8-1-04
817-001-0005	7-1-04	Repeal	8-1-04	817-090-0065	7-1-04	Amend	8-1-04
817-001-0020	7-1-04	Repeal	8-1-04	817-090-0070	7-1-04	Amend	8-1-04
817-001-0030	7-1-04	Repeal	8-1-04	817-090-0075	7-1-04	Amend	8-1-04
817-005-0005	7-1-04	Amend	8-1-04	817-090-0080	7-1-04	Amend	8-1-04
817-010-0007	7-1-04	Amend	8-1-04	817-090-0085	7-1-04	Amend	8-1-04
817-010-0014	7-1-04	Amend	8-1-04	817-090-0090	7-1-04	Amend	8-1-04
817-010-0035	7-1-04	Amend	8-1-04	817-090-0095	7-1-04	Amend	8-1-04
817-010-0055	7-1-04	Amend	8-1-04	817-090-0100	7-1-04	Amend	8-1-04
817-010-0060	7-1-04	Amend	8-1-04	817-090-0105	7-1-04	Amend	8-1-04
817-010-0065	7-1-04	Amend	8-1-04	817-090-0110	7-1-04	Amend	8-1-04
817-010-0068	7-1-04	Amend	8-1-04	817-090-0115	7-1-04	Amend	8-1-04
817-010-0069	7-1-04	Amend	8-1-04	817-100-0005	7-1-04	Amend	8-1-04
817-010-0075	7-1-04	Amend	8-1-04	817-110-0005	7-1-04	Repeal	8-1-04
817-010-0101	7-1-04	Amend	8-1-04	817-120-0005	7-1-04	Amend	8-1-04
817-010-0300	7-1-04	Amend	8-1-04	818-012-0040	6-1-04	Amend	7-1-04
817-015-0010	7-1-04	Amend	8-1-04	818-012-0075	6-1-04	Amend	7-1-04
817-015-0030	7-1-04	Amend	8-1-04	818-012-0110	6-1-04	Adopt	7-1-04
817-015-0050	7-1-04	Amend	8-1-04	818-021-0010	6-1-04	Amend	7-1-04
817-015-0065	7-1-04	Amend	8-1-04	818-021-0011	6-1-04	Amend	7-1-04
817-020-0005	7-1-04	Amend	8-1-04	818-021-0020	6-1-04	Amend	7-1-04
817-020-0011	7-1-04	Amend	8-1-04	818-021-0025	6-1-04	Amend	7-1-04
817-020-0012	7-1-04	Amend	8-1-04	818-021-0070	7-15-04	Amend	8-1-04
817-020-0015	7-1-04	Amend	8-1-04	818-021-0086	7-15-04	Repeal	8-1-04
817-020-0305	7-1-04	Amend	8-1-04	818-035-0030	6-1-04	Amend	7-1-04
817-030-0005	7-1-04	Amend	8-1-04	818-035-0080	6-1-04	Amend	7-1-04
817-030-0015	7-1-04	Amend	8-1-04	818-042-0010	6-1-04	Amend	7-1-04
817-030-0018	7-1-04	Amend	8-1-04	818-042-0020	6-1-04	Amend	7-1-04
817-030-0020	7-1-04	Amend	8-1-04	818-042-0070	6-1-04	Amend	7-1-04
817-030-0030	7-1-04	Amend	8-1-04	818-042-0080	6-1-04	Amend	7-1-04
817-030-0040	7-1-04	Amend	8-1-04	820-001-0000	7-14-04	Amend	8-1-04
817-030-0045	7-1-04	Amend	8-1-04	820-001-0020	7-14-04	Adopt	8-1-04
817-030-0055	7-1-04	Amend	8-1-04	820-010-0010	1-26-04	Amend	3-1-04
817-030-0065	7-1-04	Amend	8-1-04	820-010-0010	7-14-04	Amend	8-1-04
817-030-0080	7-1-04	Amend	8-1-04	820-010-0200	1-26-04	Amend	3-1-04
817-030-0100	7-1-04	Amend	8-1-04	820-010-0225	1-26-04	Amend	3-1-04
817-035-0010	7-1-04	Amend	8-1-04	820-010-0300	7-14-04	Amend	8-1-04
817-035-0020	7-1-04	Repeal	8-1-04	820-010-0325	7-14-04	Amend	8-1-04
817-035-0030	7-1-04	Amend	8-1-04	820-010-0450	1-26-04	Amend	3-1-04
817-035-0050	7-1-04	Amend	8-1-04	820-010-0500	1-26-04	Amend	3-1-04
817-035-0070	7-1-04	Amend	8-1-04	820-010-0623	1-26-04	Adopt	3-1-04
817-035-0090	7-1-04	Amend	8-1-04	820-015-0026	1-26-04	Amend	3-1-04
817-035-0110	7-1-04	Amend	8-1-04	836-005-0107	5-7-04	Amend	6-1-04
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817-055-0010	7-1-04	Repeal	8-1-04	836-011-0000	12-3-03	Amend	1-1-04
817-060-0020	7-1-04	Amend	8-1-04	836-031-0755	1-1-04	Amend	2-1-04
817-060-0030	7-1-04	Amend	8-1-04	836-031-0760	1-1-04	Amend	2-1-04
817-070-0005	7-1-04	Repeal	8-1-04	836-031-0855	11-26-03	Adopt(T)	1-1-04
817-080-0005	7-1-04	Amend	8-1-04	836-031-0855	5-15-04	Adopt	6-1-04
817-090-0005	7-1-04	Repeal	8-1-04	836-042-0045	1-1-04	Amend	1-1-04
817-090-0008	7-1-04	Repeal	8-1-04	836-051-0101	1-1-04	Amend	2-1-04
817-090-0015	7-1-04	Repeal	8-1-04	836-051-0106	1-1-04	Adopt	2-1-04
817-090-0025	7-1-04	Amend	8-1-04	836-051-0700	6-14-04	Adopt	7-1-04
817-090-0035	7-1-04	Amend	8-1-04	836-052-0700	2-3-04	Amend	3-1-04
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837-012-0645	1-14-04	Amend	2-1-04	845-015-0155	7-1-04	Amend	8-1-04
837-012-0720	1-14-04	Amend	2-1-04	845-015-0199	5-1-04	Adopt(T)	6-1-04
837-012-0830	1-14-04	Amend	2-1-04	847-001-0000	7-13-04	Amend	8-1-04
837-012-0850	1-14-04	Amend	2-1-04	847-001-0005	7-13-04	Amend	8-1-04
837-012-1210	1-14-04	Amend	2-1-04	847-001-0015	7-13-04	Amend	8-1-04
837-012-1220	1-14-04	Amend	2-1-04	847-001-0020	7-13-04	Adopt	8-1-04
837-012-1260	1-14-04	Amend	2-1-04	847-001-0025	7-13-04	Adopt	8-1-04
837-012-1290	1-14-04	Amend	2-1-04	847-008-0005	7-13-04	Amend	8-1-04
837-012-1300	1-14-04	Amend	2-1-04	847-008-0015	1-27-04	Amend	3-1-04
837-012-1320	1-14-04	Amend	2-1-04	847-008-0015	7-13-04	Amend	8-1-04
837-012-1340	1-14-04	Amend	2-1-04	847-008-0022	7-13-04	Adopt	8-1-04
837-030-0130	1-14-04	Amend	2-1-04	847-008-0040	7-13-04	Amend	8-1-04
837-030-0220	1-14-04	Amend	2-1-04	847-008-0045	7-13-04	Amend	8-1-04
837-030-0230	1-14-04	Amend	2-1-04	847-008-0050	12-8-03	Amend	1-1-04
837-030-0240	1-14-04	Amend	2-1-04	847-008-0055	1-27-04	Amend	3-1-04
837-030-0250	1-14-04	Amend	2-1-04	847-008-0055	7-13-04	Amend	8-1-04
837-030-0280	1-14-04	Amend	2-1-04	847-010-0056	4-22-04	Amend	6-1-04
837-040-0001	10-1-04	Amend	5-1-04	847-010-0063	4-22-04	Amend	6-1-04
837-040-0010	10-1-04	Amend	5-1-04	847-010-0073	4-22-04	Adopt	6-1-04
837-040-0140	10-1-04	Amend	5-1-04	847-012-0000	1-27-04	Amend	3-1-04
839-001-0200	1-1-04	Adopt	2-1-04	847-015-0030	3-1-04	Amend	6-1-04
839-001-0420	1-1-04	Amend	2-1-04	847-020-0130	4-22-04	Amend(T)	6-1-04
839-001-0470	1-1-04	Amend	2-1-04	847-020-0130	7-13-04	Amend	8-1-04
839-001-0490	1-1-04	Adopt	2-1-04	847-020-0170	1-27-04	Amend	3-1-04
839-016-0700	1-5-04	Amend	2-1-04	847-020-0170	4-22-04	Amend	6-1-04
839-016-0700	4-15-04	Amend	5-1-04	847-020-0170	7-13-04	Amend	8-1-04
839-016-0700	7-1-04	Amend	8-1-04	847-020-0180	1-27-04	Amend	3-1-04
839-016-0750	5-1-04	Amend	6-1-04	847-035-0030	1-27-04	Amend	3-1-04
839-016-0750	5-19-04	Amend	7-1-04	847-035-0030	4-22-04	Amend(T)	6-1-04
839-016-0750	5-24-04	Amend	7-1-04	847-035-0030	6-11-04	Amend(T)	7-1-04
839-016-0750	6-24-04	Amend	8-1-04	847-035-0030(T)	6-11-04	Suspend	7-1-04
839-016-0750	7-15-04	Amend	8-1-04	847-050-0041	4-22-04	Amend	6-1-04
839-017-0004	1-1-04	Amend	2-1-04	847-070-0033	4-22-04	Adopt	6-1-04
839-017-0500	1-1-04	Adopt	2-1-04	847-080-0010	7-13-04	Amend	8-1-04
839-017-0505	1-1-04	Adopt	2-1-04	847-080-0019	7-13-04	Amend	8-1-04
839-017-0510	1-1-04	Adopt	2-1-04	850-001-0000	6-10-04	Amend	7-1-04
839-017-0515	1-1-04	Adopt	2-1-04	850-010-0130	2-11-04	Amend	3-1-04
839-017-0520	1-1-04	Adopt	2-1-04	850-010-0210	6-10-04	Amend	7-1-04
839-020-0027	1-1-04	Adopt	2-1-04	850-010-0212	6-10-04	Adopt	7-1-04
839-020-0030	1-1-04	Amend	2-1-04	850-010-0215	4-14-04	Amend	5-1-04
839-020-0115	1-1-04	Amend	2-1-04	850-010-0225	12-5-03	Amend	1-1-04
839-020-0125	1-1-04	Amend	2-1-04	850-010-0225	6-10-04	Amend	7-1-04
839-020-0150	2-1-04	Amend	2-1-04	850-010-0226	12-5-03	Amend	1-1-04
845-003-0590	2-10-04	Amend	1-1-04	850-010-0226	6-10-04	Amend	7-1-04
845-003-0670	12-1-03	Amend	1-1-04	851-001-0005	5-4-04	Amend	6-1-04
845-005-0304	1-1-04	Amend	2-1-04	851-001-0006	5-4-04	Amend	6-1-04
845-005-0445	1-1-04	Amend(T)	2-1-04	851-001-0007	5-4-04	Amend	6-1-04
845-005-0445	6-29-04	Amend	7-1-04	851-001-0015	5-4-04	Amend	6-1-04
845-006-0335	4-9-04	Amend	5-1-04	851-001-0020	5-4-04	Amend	6-1-04
845-006-0347	5-19-04	Amend	7-1-04	851-001-0030	5-4-04	Adopt	6-1-04
845-006-0430	4-1-04	Amend	5-1-04	851-002-0040	2-26-04	Amend	4-1-04
845-006-0441	12-1-03	Amend	1-1-04	851-021-0010	12-9-03	Amend	1-1-04
845-007-0015	6-1-04	Amend	4-1-04	851-031-0010	12-9-03	Amend	1-1-04
845-008-0045	7-1-04	Amend	8-1-04	851-047-0000	2-26-04	Amend	4-1-04
845-009-0015	12-1-03	Amend	1-1-04	851-047-0010	2-26-04	Amend	4-1-04

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851-047-0030	2-26-04	Amend	4-1-04	851-062-0090	2-12-04	Amend	3-1-04
851-047-0040	2-26-04	Amend	4-1-04	851-062-0100	2-12-04	Amend	3-1-04
851-050-0000	5-12-04	Amend	6-1-04	851-062-0110	2-12-04	Amend	3-1-04
851-050-0004	5-12-04	Amend	6-1-04	851-062-0120	2-12-04	Amend	3-1-04
851-050-0006	5-12-04	Amend	6-1-04	851-062-0130	2-12-04	Amend	3-1-04
851-050-0131	12-9-03	Amend	1-1-04	851-063-0010	2-12-04	Amend	3-1-04
851-050-0131	2-26-04	Amend	4-1-04	851-063-0020	2-12-04	Amend	3-1-04
851-050-0131	5-4-04	Amend	6-1-04	851-063-0030	2-12-04	Amend	3-1-04
851-050-0131	7-13-04	Amend	8-1-04	851-063-0040	2-12-04	Amend	3-1-04
851-050-0133	12-23-03	Amend(T)	2-1-04	851-063-0050	2-12-04	Amend	3-1-04
851-050-0133	5-12-04	Repeal	6-1-04	851-063-0060	2-12-04	Amend	3-1-04
851-050-0134	12-23-03	Amend(T)	2-1-04	851-063-0070	2-12-04	Amend	3-1-04
851-050-0134	5-12-04	Repeal	6-1-04	851-063-0080	2-12-04	Amend	3-1-04
851-050-0138	5-12-04	Amend	6-1-04	851-063-0100	2-12-04	Amend	3-1-04
851-050-0140	5-12-04	Amend	6-1-04	852-001-0001	3-8-04	Amend	4-1-04
851-050-0145	12-23-03	Amend(T)	2-1-04	852-001-0002	3-8-04	Amend	4-1-04
851-050-0145	5-12-04	Repeal	6-1-04	852-001-0005	5-20-04	Repeal	7-1-04
851-050-0150	12-23-03	Suspend	2-1-04	852-001-0010	5-20-04	Repeal	7-1-04
851-050-0155	12-23-03	Amend(T)	2-1-04	852-001-0015	5-20-04	Repeal	7-1-04
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851-050-0161	12-23-03	Adopt(T)	2-1-04	852-020-0031	3-8-04	Adopt	4-1-04
851-050-0161	5-12-04	Repeal	6-1-04	852-020-0060	3-8-04	Amend	4-1-04
851-050-0162	5-12-04	Adopt	6-1-04	852-060-0004	5-20-04	Amend	7-1-04
851-050-0163	5-12-04	Adopt	6-1-04	852-060-0060	5-20-04	Adopt	7-1-04
851-050-0164	5-12-04	Adopt	6-1-04	852-060-0065	5-20-04	Adopt	7-1-04
851-050-0170	12-23-03	Amend(T)	2-1-04	852-060-0070	5-20-04	Adopt	7-1-04
851-050-0170	5-12-04	Amend	6-1-04	852-060-0075	5-20-04	Adopt	7-1-04
851-061-0010	2-12-04	Amend	3-1-04	853-010-0060	1-30-04	Amend	3-1-04
851-061-0020	2-12-04	Amend	3-1-04	855-021-0005	6-1-04	Amend	7-1-04
851-061-0020	7-13-04	Amend	8-1-04	855-021-0010	6-1-04	Amend	7-1-04
851-061-0030	2-12-04	Amend	3-1-04	855-021-0015	6-1-04	Repeal	7-1-04
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851-061-0050	2-12-04	Amend	3-1-04	855-021-0030	6-1-04	Amend	7-1-04
851-061-0070	2-12-04	Amend	3-1-04	855-021-0035	6-1-04	Repeal	7-1-04
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851-061-0080	7-13-04	Amend	8-1-04	855-031-0015	3-12-04	Amend	4-1-04
851-061-0090	2-12-04	Amend	3-1-04	855-031-0045	3-12-04	Amend	4-1-04
851-061-0090	7-13-04	Amend	8-1-04	855-043-0200	5-24-04	Repeal	7-1-04
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851-061-0110	2-12-04	Amend	3-1-04	855-043-0210	12-31-03	Adopt(T)	2-1-04
851-061-0110	7-13-04	Amend	8-1-04	855-043-0210	6-1-04	Adopt	7-1-04
851-061-0130	2-12-04	Adopt	3-1-04	858-010-0030	3-2-04	Amend(T)	4-1-04
851-062-0005	2-12-04	Adopt	3-1-04	858-050-0125	3-2-04	Amend(T)	4-1-04
851-062-0010	2-12-04	Amend	3-1-04	860-011-0001	4-29-04	Amend	6-1-04
851-062-0010	2-20-04	Amend	4-1-04	860-012-0100	1-8-04	Adopt	2-1-04
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851-062-0050	2-12-04	Amend	3-1-04	860-024-0021	11-28-03	Amend	1-1-04
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851-062-0060	2-12-04	Repeal	3-1-04	860-027-0300	3-24-04	Amend(T)	5-1-04
851-062-0070	2-12-04	Amend	3-1-04	860-028-0195	4-21-04	Adopt	6-1-04
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860-034-0010	6-2-04	Amend	7-1-04	860-037-0045	1-29-04	Amend	3-1-04
860-034-0140	1-9-04	Amend(T)	2-1-04	860-037-0050	1-29-04	Amend	3-1-04
860-034-0140	6-2-04	Amend	7-1-04	860-037-0055	1-29-04	Amend	3-1-04
860-035-0010	1-15-04	Repeal	2-1-04	860-037-0060	1-29-04	Amend	3-1-04
860-035-0020	1-15-04	Repeal	2-1-04	860-037-0065	1-29-04	Amend	3-1-04
860-035-0030	1-15-04	Repeal	2-1-04	860-037-0067	1-29-04	Adopt	3-1-04
860-035-0040	1-15-04	Repeal	2-1-04	860-037-0070	1-29-04	Amend	3-1-04
860-035-0050	1-15-04	Repeal	2-1-04	860-037-0075	1-29-04	Amend	3-1-04
860-035-0060	1-15-04	Repeal	2-1-04	860-037-0080	1-29-04	Amend	3-1-04
860-035-0070	1-15-04	Repeal	2-1-04	860-037-0101	1-29-04	Adopt	3-1-04
860-035-0080	1-15-04	Repeal	2-1-04	860-037-0105	1-29-04	Amend	3-1-04
860-035-0090	1-15-04	Repeal	2-1-04	860-037-0110	1-29-04	Amend	3-1-04
860-035-0100	1-15-04	Repeal	2-1-04	860-037-0115	1-29-04	Amend	3-1-04
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860-035-0130	1-15-04	Repeal	2-1-04	860-037-0205	1-29-04	Amend	3-1-04
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860-036-0040	6-2-04	Amend	7-1-04	860-037-0230	1-29-04	Amend	3-1-04
860-036-0080	4-9-04	Amend	5-1-04	860-037-0235	1-29-04	Amend	3-1-04
860-036-0120	4-9-04	Amend	5-1-04	860-037-0240	1-29-04	Amend	3-1-04
860-036-0330	12-10-03	Suspend	1-1-04	860-037-0245	1-29-04	Amend	3-1-04
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860-036-0757	12-10-03	Adopt(T)	1-1-04	860-037-0415	1-29-04	Amend	3-1-04
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860-037-0560	1-29-04	Amend	3-1-04	918-020-0090	7-1-04	Amend	7-1-04
860-037-0565	1-29-04	Amend	3-1-04	918-020-0091	7-1-04	Adopt	7-1-04
860-037-0567	1-29-04	Adopt	3-1-04	918-030-0100	4-1-04	Adopt	3-1-04
860-037-0570	12-10-03	Adopt(T)	1-1-04	918-030-0200	7-1-04	Adopt	7-1-04
860-037-0570	4-9-04	Adopt	5-1-04	918-030-0320	7-1-04	Adopt	8-1-04
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860-037-0610	1-29-04	Amend	3-1-04	918-030-0900	4-1-04	Adopt	3-1-04
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