

OREGON BULLETIN

Supplements the 2004 *Oregon Administrative Rules Compilation*

Volume 43, No. 12
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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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OTHER NOTICES

PROPOSED SOIL CLEANUP APPROVAL AND NO FURTHER ACTION DETERMINATION FRONTIER LEATHER SITE SHERWOOD, OREGON

COMMENTS DUE: December 30, 2004

PROJECT LOCATION: 1210 NE Oregon Street, Sherwood, Oregon

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) proposes approval of an investigation and soil cleanup, issuance of a No Further Action (NFA) determination for Lots 1 and 2 of Tax Lot (TL) 400 of the Frontier Leather site.

HIGHLIGHTS: The Frontier Leather Company operated a leather tannery on the site between 1947 and 1998. They produced finished leather from animal hides using a tanning solution with 5% trivalent chromium oxide. The process generated large volumes of wastewater that was treated on-site in a primary and secondary clarifier.

The Frontier Leather Site consists of TL 400 and 500. The tannery building and associated primary water treatment area is located on TL 400, which covers about 5 acres; TL 500 formerly contained the hide house and covers 4 acres. In 2003, TL 400 was subdivided into Lots 1 (1.50 acres), 2 (0.56 acres), and 3 (2.76 acres). The tannery building is located on Lot 3; there are no structures on Lots 1 and 2.

On January 31, 2002, DEQ entered into a Prospective Purchaser Agreement (PPA) with Pacific III LLC (Pacific) for investigation and cleanup of TLs 400 and 500, which comprise the main operational areas of the Frontier Leather Site. Major elements of the PPA specific to Lots 1 and 2 of TL 400 included: hide split removal and confirmation sampling, and monitoring well sampling, which included three wells on Lots 1 and 2.

From September 9 through November 11, 2002, a total of approximately 2,200 tons of hides and associated soil were removed from TL 400 and disposed in a solid waste landfill. It appears that the hides on TL 400 were limited to Lot 1. There do not appear to be hides on Lots 2 or 3. Based on the confirmation sampling results following the hide and soil removal, and results from the monitoring well sampling, DEQ has determined that the remedial actions conducted by Pacific are protective of human health for the proposed site use as high density residential housing. Because Lots 1 and 2 of TL 400 does not present a significant risk to human health or the environment, DEQ is proposing to approve the remedial action and issue a No Further Action (NFA) determination, and remove the property from the CRL and Inventory. The proposed NFA determination only applies to future site use as a high density residential development, and not single family residences.

The investigation and cleanup of Lot 3 under terms of the PPA has not been completed, and potentially contaminated material remains on that property. Site controls and best management practices identified in the PPA will be implemented during the site investigation, building demolition and removal of contaminated materials on Lot 3 to control contaminant migration through airborne emissions or overland runoff. These measures will eliminate significant contaminant exposure to potential future residents on Lots 1 and 2, and existing residents south of Oregon Street.

HOW TO COMMENT: The staff report and other files will be available for public review beginning Wednesday, December 1, 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, December 30, 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.

PROPOSED SEDIMENT CLEANUP APPROVAL AND NO FURTHER ACTION DETERMINATION TRACT A OF THE FORMER OREGON ROSES NURSERY SITE, HILLSBORO, OREGON

COMMENTS DUE: December 30, 2004

PROJECT LOCATION: 1170 SE Tualatin Valley Highway (State Highway 8), Hillsboro, Oregon

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) proposes approval of a cleanup of contaminated sediment at the site and issuance of a no further action (NFA) determination for the site.

HIGHLIGHTS: The site is an approximately 10,000 square foot area of a 10-acre parcel of property located just to the west of the former Oregon Roses Nursery in Hillsboro. The 10-acre parcel is adjacent to the Jackson Bottom Wetlands, which provides habitat for a number of federally threatened or endangered species. The Oregon Roses site operated from about 1911 until being developed in 2003 as the Arbor Rose subdivision. Historically, untreated storm water runoff discharged into a wetland area of Tract A. In October 2002, DEQ was notified that a release of bunker C heating oil had occurred in the UST area of the nursery, migrated through a storm drain into the former storm water retention pond, and ultimately reached Tract A in the Jackson Bottom Wetlands. During the initial spill response approximately 100 cubic yards of soil were removed. Laboratory results showed that heavy oil contamination associated with the release had been removed to below the specified cleanup level of 500 milligrams per kilogram (mg/kg), but sufficient sampling was not conducted to assess residual contaminant impacts to wetland sediments beyond the immediate discharge area. Subsequent sediment sampling showed elevated levels of metals and polycyclic aromatic hydrocarbons in the vicinity of the discharge area. The upper 2.5 feet of soil in the discharge area, totaling about 240 tons, was removed. Confirmation sampling results showed that the majority of contaminated sediment had been removed. DEQ has determined that the residual contaminant concentrations in sediment do not pose a significant risk to human health or the environment. DEQ proposes to approve the site cleanup and issue a NFA determination following the public review and comment period, provided no significant comments are received.

HOW TO COMMENT: The staff memorandum and other files will be available for public review beginning Wednesday, December 1, 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 should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Ave., Suite 400, Portland, OR 97201 by Thursday, December 30, 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 the final decision after consideration of these comments.

PROPOSED APPROVAL OF CLEANUP REMEDY AT INTERPARK PROPERTY IN PORTLAND, OREGON

COMMENTS DUE: December 31, 2004

PROJECT LOCATION: Between SW 1st and 2nd Avenues and SW Main and Madison Streets, Portland, Oregon

PROPOSAL: As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the proposed site remedy at the Interpark Property in Portland, Oregon.

HIGHLIGHTS: Site investigations identified chlorinated solvent and petroleum releases to subsurface soil and/or groundwater at the property, which is currently used as a surface-grade parking lot. When used as a parking lot, there are no unacceptable risks. The proposed future development may pose potential human health risks

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because people may come into contact with the contamination. DEQ will require that future site development include plans to manage soils during construction, notify site workers of the contamination and potential risks, and prevent exposure to future building workers by addressing vapor infiltration concerns in the building construction and design. A DEQ staff report detailing site conditions, risks, and an evaluation of remedies is available for public review and comment.

HOW TO COMMENT: To schedule an appointment at DEQ, contact Dawn Weinberger at 229-6729. The DEQ project manager is Alicia C. Voss (229-5011). Written comments should be sent to the project manager at DEQ, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 by December 31, 2004. A public meeting will be held to receive verbal comments if requested by 10 or more people or by a group with membership of 10 or more.

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

PROPOSED REMEDIAL ACTION FOR THE FORMER LAKESHORE EXXON SERVICE STATION, KLAMATH FALLS, OREGON

COMMENTS DUE: January 1, 2005

PROJECT LOCATION: 11091 Highway 97 North, Klamath Falls
PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to issue a No Further Action decision regarding cleanup activities at the above referenced site based upon an approval of work done to date and a proposed Risk-Based remedy.

HIGHLIGHTS: The site is an irregularly shaped lot of approximately 1.27 acres in size which has had an operating gasoline service station from the 1940s until 1993. There are no active facilities currently in operation at the site. Past activities at the site include the decommissioned by removal a total of 7 underground storage tanks (USTs) which previously held gasoline or diesel; disposal of 2,444 cubic yards of petroleum contaminated soil (PCS); assessments to determine the extent and magnitude of petroleum contamination to soil and groundwater.

A conceptual site model was developed and a risk assessment performed which showed that residual petroleum hydrocarbons (benzene) in soil, with the exception of two potential hot spots located in (1) the northern portion of the lot described in the report as "the 39 ft² commercial building control area..." and (2) the area described as "...the 4,000 ft² owner occupied residential building control area..." do not pose an unacceptable risk for occupational, construction and excavation workers or owner-occupied building residents, respectively, for all reasonably likely current and future exposure pathways. If however, there is a proposal for construction of buildings in either of these areas further evaluation of the risk is required. Residual petroleum hydrocarbons in groundwater do not pose a current risk to occupational workers at the site; however an evaluation of water quality for petroleum hydrocarbons is required prior to the construction of a domestic water supply well.

Based upon the consultant's findings, there are no pathways by which ecological receptors may be exposed to site-related contaminants. Residual contaminants at the site do not currently produce odors or other nuisance conditions.

If implemented as proposed this risk-based corrective action plan will achieve protective conditions at the site as defined in OAR 340-122-0040.

COMMENT: The reports pertaining to the recommendation of acceptance of the proposed remedial actions may be reviewed, by appointment, at DEQ's office in Bend, 2146 NE 4th Street, Suite 104, Bend, OR 97701. To schedule an appointment or make enquiries contact Joe Klemz at (541) 388-6146, ext. 237.

Written comments should be sent by January 1, 2005 to the attention of Mr. Klemz at the address listed above. Questions may also be directed to Mr. Klemz via email at klemz.joe@deq.state.or.us .

NEXT STEP: DEQ will consider all comments received. A final decision concerning the proposed remedial actions will be made after consideration of public comments.

PROPOSED REMEDIAL ACTION AT THE CHILOQUIN FOREST PRODUCTS (FORMER) CHILOQUIN, OREGON

COMMENTS DUE: December 31, 3004

PROJECT LOCATION: West end of Blocklinger St, Chiloquin, Klamath County

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to approve a remedial action at the former Chiloquin Forest Products mill. The site is located at the west end of Blocklinger Street along the bank of the Sprague River in Chiloquin.

HIGHLIGHTS: The DEQ Voluntary Cleanup Program has reviewed the information gathered during site investigation (SI) activities performed at the site. Based on the information gathered during SI, four areas of concern were identified: 1) the potential of asbestos containing material (ACM) and lead paint in the boiler house; 2) pentachlorophenol (PCP) and petroleum contaminated soil (PCS); and 3) continued degradation of large quantities of wood waste resulting in impacts to the Sprague River. The following remedial action objectives (RAOs) were developed to address the areas of concern identified: 1) eliminate physical and health hazards posed by the boiler house; 2) prevent human contact to media that pose an unacceptable risk, specifically PCP and PCS and product on groundwater; and 3) prevent migration of iron and manganese resulting in unacceptable exposure to surface water receptors.

The following cleanup alternatives were selected for each area of concern: 1) hazardous materials abatement in the boiler house and demolition; 2) removal and off-site landfill disposal of PCS and PCP contaminated soil; and 3) removal and disposal and/or reuse of the wood waste from the former log pond and adjacent areas.

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

A copy of significant portions of the project file is also located at the Chiloquin Library in a file entitled the "Chiloquin Mill Site Restoration Project".

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 DETERMINATION FOR THE ACID RELEASE REMEDIATION AT THE SUMCO OREGON SOUTH CAMPUS SITE IN SALEM, OREGON

COMMENT PERIOD: December 1 through December 31, 2004

PROJECT LOCATION: 3990 Fairview Drive SE in Salem, Oregon

PROPOSAL: As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the proposed no further action determination for the acid release remediation at the SUMCO Oregon South Campus Site in Salem, Oregon.

HIGHLIGHTS: SUMCO Oregon (SUMCO) recently completed remedial and monitoring activities following an acid spill at its South

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Campus facility in 2000. DEQ proposes a no further action determination for the site where the isolated release and cleanup has occurred.

In March 2000, SUMCO reported a sulfuric acid release from an above-ground tank located in an unpaved area next to a manufacturing building. The acid solution infiltrated surrounding soil and migrated to shallow groundwater. The release was reported to DEQ and is currently tracked in DEQ's Environmental Cleanup Site Information database as Site ID 2591. SUMCO joined DEQ's Voluntary Cleanup Program in May 2000 to address residual impacts to soil and groundwater. Descriptions of the release and the abatement, control, and remedial actions are provided in various reports submitted to DEQ by SUMCO.

Site investigation efforts indicated that two pockets of low pH soil were initially present at depths between approximately 5 and 10 feet below ground surface (bgs) in the release area. Through surface water infiltration and leaching, this acidic soil represented a source of low-pH to groundwater. The extent of soil, surface water, and groundwater impacts were localized and were initially addressed by engineering and institutional controls.

SUMCO's overall remedial action objective was to restore soil and groundwater to acceptable pH levels such that engineering and institutional controls were no longer necessary. In mid-2002, SUMCO began in-place soil neutralization and monitoring activities. The remedial system was operated under DEQ oversight from July 2002 until December 2003, when the mass of low-pH soils had been effectively minimized. Subsequent closure groundwater monitoring was conducted between December 2003 and September 2004. The results of closure monitoring indicated that (1) the volume of low-pH soil was effectively minimized, (2) surface water infiltration through affected soil no longer has measurable effects on surrounding groundwater pH, and (3) groundwater pH was restored consistent with "background" levels.

DEQ has determined that based on current data and past remedial actions, there is no current or future likely adverse impact to human health or the environment posed by the site.

MORE INFORMATION: A file containing detailed information for the site is available for review in DEQ's Eugene office located at 1102 Lincoln St., Suite 210, Eugene, Oregon 97401. Questions concerning this site should be directed to Bill Mason at DEQ's Eugene office or by calling him at 541-686-7838, extension 257 or toll-free in Oregon at 1-800-844-8467 extension 257. A site summary report is available on the web at <http://egov.oregon.gov/DEQ/LQ/cu/sites/sumco.shtml>

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

PROPOSED NO FURTHER ACTION FOR FORMER UNOCAL BULK PLANT REDMOND, OREGON

COMMENTS DUE: December 31, 2004

PROJECT LOCATION: 256 N. Canal Blvd., Redmond, OR

PROPOSAL: The Department of Environmental Quality is proposing to issue a decision regarding cleanup activities at the above

referenced site based on approval of an investigation and removal actions conducted to date. Public notification is required by ORS 465.320.

HIGHLIGHTS: The subject property was operated as a bulk petroleum facility from the mid 1920s until 1987. It has also operated as automotive towing and repair yard and a construction storage yard more recently. The property is within the planned US Highway 97 rerouting through Redmond. All of the buildings and structures have been removed from this 0.9 acre site. Based on historical uses at the site an assessment of the site was conducted across the site. The compounds detected in soil included petroleum products used at the site including diesel, and heavy oils. During the assessment approximately 31 cubic yards of impacted soil were removed from beneath the former warehouse area and disposed at a solid waste landfill. Confirmation samples as well as sample results from other potential areas of concern indicate that the remaining soil meets applicable risk-based screening levels.

Based on the findings to date DEQ is proposing a No Further Action determination at the site and believes that this determination is protective as defined in OAR-340-122-040.

COMMENT: The staff report recommending the proposed action may be reviewed by appointment at DEQ's Office in Bend, 2146 NE Fourth Street, Suite 104, Bend, OR 97701. To schedule an appointment, contact Toby Scott at (541) 388-6146, ext. 246. Written comments should be sent by December 31, 2004 to Mr. Scott at the address listed above. Questions may also be directed to Mr. Scott by calling him directly.

NEXT STEP: DEQ will consider all comments received. A final decision concerning the proposed remedial actions will be made after consideration of public comments.

FINAL APPROVAL OF CLEANUP REMEDY AT CONTAINER RECOVERY IN PORTLAND, OREGON

PROJECT LOCATION: 3900 NW Yeon Avenue, Portland, Oregon

FINAL APPROVAL: As required by ORS 465.320, the Department of Environmental Quality (DEQ) is providing notice on the final approval of the remedy at the Container Recovery site in Portland, Oregon.

HIGHLIGHTS: Site investigations identified chlorinated solvent shallow groundwater contamination at the site in the 1990s. Recent groundwater monitoring events (2003 and 2004) documented that the contaminant plume is stable, has not migrated off-site, and does not pose a current risk. Potential future risks were addressed by notifying workers who may come into contact with the groundwater, prohibiting shallow groundwater use, and restricting future land use. An October 2004 DEQ Record of Decision detailing site conditions, site risks, and the final remedy is available for public review. The remedy was successfully implemented in October and November 2004. The formal public review and comment period was held in September 2004 and no comments were received.

NOTICES OF PROPOSED RULEMAKING

Corrections

The following notices, published in the print edition of the November 2004 *Oregon Bulletin*, contained minor errors. For the Appraiser Certification and Licensure Board, OAR 165-025-0060 was incorrectly cited as "165-005-0060" in the Amend category. For the Department of Fish and Wildlife, the Last Day for Comment of 1-6-05 was incorrectly listed as "1-6-04." The corrected notices appear below.

Appraiser Certification and Licensure Board Chapter 161

Date:	Time:	Location:
1-10-05	9 a.m.	West Coast Bank 2nd Flr. Community Conf. Rm. 301 Church St. NE Salem, OR

Hearing Officer: Craig Zell
Stat. Auth.: ORS 183.341(4), 674.305(8), 674.310
Stats. Implemented: ORS 674.305(8), 674.130
Proposed Amendments: 161-002-0000, 161-025-0060
Last Date for Comment: 1-10-05, close of hearing
Summary: Proposed changes to Oregon Administrative Rules 161, Division 2 regarding definitions; and Division 25 regarding appraisal standards and USPAP.
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: Karen Turnbow
Address: Appraiser Certification and Licensure Board, 1860 Hawthorne Ave NE, Suite 200, Salem, OR 97303
Telephone: (503) 485-2555

Department of Fish and Wildlife Chapter 635

Date:	Time:	Location:
12-10-04	8 a.m.	ODFW Commission Rm. 3406 Cherry Ave. NE Salem, OR 97303
1-6-05	8 a.m.	ODFW Commission Rm. 3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish and Wildlife Commission
Stat. Auth.: ORS 183, 496, 496.012, 496.138, 496.146, 496.162
Stats. Implemented: ORS 183, 496, 496.171-496.192, 497.298, 497.308, 498.002, 498.006, 498.012, 498.026
Proposed Adoptions: Rules in 635-110
Proposed Amendments: Rules in 635-043
Last Date for Comment: 1-6-05
Summary: The Oregon Fish and Wildlife Commission proposes to adopt an Oregon Wolf Conservation and Management Plan and associated administrative rules, and to amend certain existing rules to ensure consistency with the Plan.
**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

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 indicated.

Public comment may be submitted in writing directly to an agency or presented orally or in writing at the rulemaking hearing. Written

comment must be submitted to an agency by 5:00 p.m. on the Last Day for Comment listed, unless a different time of day is specified. 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.

In Notices of Proposed Rulemaking where no hearing has been set, a 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 within 21 days following notice publication in the *Oregon Bulletin*. If sufficient hearing requests are received by an agency, 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 Massage Therapists Chapter 334

Date:	Time:	Location:
1-12-05	1 p.m.	748 Hawthorne Ave. NE Salem, OR 97301

Hearing Officer: Patty Glenn
Stat. Auth.: ORS 182.466, 183 & 687.121
Stats. Implemented:
Proposed Amendments: 334-010-0050
Last Date for Comment: 1-12-05, 4:30 p.m.
Summary: To vote in the temporary rules pertaining to deleting the words "Board Approved" and to change how many credits earned for volunteering at an organized event.

To re-write the continuing education rule to make it easier for Massage Therapists to obtain their continuing education.

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

Rules Coordinator: Michelle Sherman
Address: Board of Massage Therapists, 748 Hawthorne Ave. NE, Salem, OR 97301
Telephone: (503) 365-8657

Board of Medical Examiners Chapter 847

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.010(5) & 677.089
Proposed Amendments: 847-015-0025
Last Date for Comment: 12-27-04
Summary: The proposed amendment add that the supervising physician of a physician assistant who is requesting the physician assistant to be Board approved for emergency dispensing privileges must be registered as a dispensing physician.
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 677.010(5), 677.089 & 677.515(5)
Proposed Amendments: 847-050-0041
Last Date for Comment: 12-27-04

Summary: The proposed amendment to the rules on physician assistant prescribing add that the supervising physician of a physician assistant who is applying for emergency dispensing privileges or a supervising physician who monitors/supervises a nurse practitioner who dispenses medications must be registered with the Board as a dispensing physician.

Rules Coordinator: Diana M. Dolstra

NOTICES OF PROPOSED RULEMAKING

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

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Stat. Auth.: ORS 682.245
Stats. Implemented: ORS 682.245
Proposed Amendments: 847-035-0030
Last Date for Comment: 12-27-04

Summary: The proposed amendment adds the administration of epinephrine by automatic injection device for anaphylaxis to the First Responder scope of practice.

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

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Stat. Auth.: ORS 682.245
Stats. Implemented: ORS 682.245
Proposed Amendments: 847-035-0030
Last Date for Comment: 12-27-04

Summary: The proposed rules allows EMT-Basics, in the event of a release of chemical agents, to administer atropine sulfate and pralidoxime chloride from a pre-loaded auto-injector device if they are given a direct order by their supervising physician, or they are under the direction of an EMT-Paramedic who is on the scene.

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

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Board of Naturopathic Examiners Chapter 850

Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.145
Proposed Amendments: 850-010-0225
Last Date for Comment: 12-23-04

Summary: Update the Formulary compendium used by physicians and pharmacists and reinstate the following information as the preamble to the list:

The following substances have been recommended for addition to the Formulary Compendium after review by the Board of Naturopathic Examiners Formulary Council established by the 65th Oregon Legislature. Classifications of Substances listed on the formulary compendium, which can be prescribed in any dosage or any dosage form. Products marked with an asterisk (*) may be used by Naturopathic Physicians, but may not be prescribed. Combination products containing only active ingredients listed in the Formulary may be prescribed. Combination products containing any active ingredient(s), not listed in the Formulary, except non-legend drugs, may not be prescribed.

Rules Coordinator: Anne Walsh
Address: Board of Naturopathic Examiners, 800 NE Oregon St. - Suite 407, Portland, OR 97232
Telephone: (503) 731-4045

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Board of Pharmacy Chapter 855

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.205
Proposed Adoptions: 855-041-0600, 855-041-0610, 855-041-0620

Proposed Amendments: 855-110-0007, 855-110-0010
Last Date for Comment: 12-21-04

Summary: This rule will allow pharmacies the ability to safely provide pharmacy services through an automated pharmacy system. These systems will be especially useful in rural areas where local

pharmacies are a considerable distance from the customer. The rule defines the systems, duties and responsibilities of the pharmacist in charge, and the drug delivery and control for the remote dispensing machine.

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

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Bureau of Labor and Industries Chapter 839

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.820, 659A.830 & 659A.835
Proposed Amendments: 839-003-0090
Last Date for Comment: 12-21-04

Summary: The proposed rule amendment clarifies that for the purposes of assessing liability for hostile work environment complaints, behavior alleged to have occurred outside the one year statute of limitations may be considered, so long as any act contributing to a hostile environment occurred within the statutory period.

Rules Coordinator: Marcia Ohlemiller
Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232
Telephone: (503) 731-4212

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Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Proposed Amendments: 839-016-0020, 839-016-0100
Last Date for Comment: 12-22-04

Summary: The proposed amendments clarify application of the Prevailing Wage Rate (PWR) law to Construction Managers/General Contractors (CM/GCs) and revise the definition of "Funds of a public agency" in the PWR rules to include loans by a public agency, including the loan of the proceeds from conduit or pass-through revenue bonds.

Rules Coordinator: Marcia Ohlemiller
Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232
Telephone: (503) 731-4212

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Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 - 659A.186
Proposed Amendments: 839-009-0240, 839-009-0260
Last Date for Comment: 1-3-05

Summary: The proposed amendment to OAR 839-009-0240 clarifies, in conformance with the Oregon Family Leave Act (OFLA), that a female employee who has been granted OFLA pregnancy disability leave need not re-qualify for an additional 12 weeks of leave within the same leave year for any other OFLA leave purpose.

The proposed amendment to OAR 839-009-0260 corrects an incorrect reference in the current rule and conforms the rules to ORS 659A.165.

Rules Coordinator: Marcia Ohlemiller
Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232
Telephone: (503) 731-4212

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Stat. Auth.: ORS 654.062(5)
Stats. Implemented: ORS 654.062(5)
Proposed Amendments: 839-004-0021
Last Date for Comment: 1-3-05

Summary: The proposed amendment duplicates a current rule, that persons reporting unsafe working conditions under the Oregon Safety and Health Act (OSEA) must contact the bureau within 30 days of having reasonable cause to believe that a violation of OSEA has occurred. The proposed amendment simply repeats into OAR 839-

NOTICES OF PROPOSED RULEMAKING

004-0021 (which deals with opposition to health and safety hazards in the workplace) language from OAR 839-003-0025(3), which deals with civil rights complaints. The proposed rule is needed because readers of both rules need the subject information. Because the language is already in another bureau rule, it does not change current policy.

Rules Coordinator: Marcia Ohlemiller

Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Telephone: (503) 731-4212

Stat. Auth.: ORS 659A.805; Other Auth.: Stamper v. Salem Keizer School District, 195 Or. App. 291, 97 P3d 680 (2004)

Stats. Implemented: ORS 659A.100 - 659A.145

Proposed Amendments: 839-006-0205, 839-006-0206

Last Date for Comment: 1-3-05

Summary: The proposed amendments would clarify that Oregon statutes prohibiting discrimination on the basis of disability require reasonable accommodation which includes a duty of employers to engage in an interactive process with a disabled individual regarding accommodation. This is already the current policy position of the bureau, and federal law also requires it. The Oregon Court of Appeals ruled in Stamper v. Salem Keizer School District that Oregon law requires an interactive process.

Rules Coordinator: Marcia Ohlemiller

Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Telephone: (503) 731-4212

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.305 & 653.525

Proposed Adoptions: 839-021-0106

Proposed Amendments: 839-021-0355

Last Date for Comment: 12-22-04

Summary: The proposed new rule extends the current prohibition under state and federal law restricting the employment of minors in occupations relating to the manufacture and storage of explosives to use of explosives by minors under the age of 18. The proposed rule amendment makes permanent a temporary rule adopted by the Wage and Hour Commission on July 28, 2004 authorizing the Commission, for good cause shown, to exempt the employment of minors under 16 years of age in the entertainment industry from occupations prohibited pursuant to OAR 839-021-0102 under certain circumstances and when certain conditions are met.

Rules Coordinator: Marcia Ohlemiller

Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Telephone: (503) 731-4212

Department of Agriculture Chapter 603

Date:	Time:	Location:
12-17-04	9:30 a.m.	635 Capitol St. NE Salem, OR

Hearing Officer: Mike Govro

Stat. Auth.: ORS 561.190, 570.405 & 570.305

Stats. Implemented: ORS 570.405

Proposed Amendments: 603-052-0150

Last Date for Comment: 12-30-04

Summary: The proposed amendment would update the control recommendations for cherry fruit fly control in counties where commercial cherries are an important crop. The current rule still refers to recommendations from 1975.

**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 97310

Telephone: (503) 986-4583

Date:	Time:	Location:
12-17-04	10:15 a.m.	635 Capitol St. NE Salem, OR

Hearing Officer: Mike Govro

Stat. Auth.: ORS 561.190, 561.510-600 & 503.305

Stats. Implemented: ORS 561.510

Proposed Amendments: 603-052-0118

Last Date for Comment: 12-30-04

Summary: Proposed changes would update Oregon's quarantine against peach rosette disease. The common name of the disease would be changed from "peach rosette MLO" to "peach rosette phytoplasma" to reflect modern usage. Six additional states would be added to the area under quarantine: Illinois, Indiana, Kansas, Kentucky, Missouri, and Texas. Florida would be deleted. Civil penalty authority, recently given to the department for quarantine violations, would become part of the rule.

**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 97310

Telephone: (503) 986-4583

Date:	Time:	Location:
12-17-04	9 a.m.	ODA 635 Capitol St. Salem, OR

Hearing Officer: Mike Govro

Stat. Auth.: ORS 561.190, 561.510, 561.540 & 570.305

Stats. Implemented: ORS 561.510

Proposed Amendments: 603-052-1230

Last Date for Comment: 12-30-04

Summary: The proposed amendments would update the counties quarantined for *Phytophthora ramorum* in California, the quarantine area boundaries in Curry County, OR, and the list of hosts and associated plants. Provisions for importing covered commodities from infested areas are listed. Eradication requirements are presented for nurseries and other properties in Oregon where *P. ramorum* is found.

**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 97310

Telephone: (503) 986-4583

Date:	Time:	Location:
12-17-04	9:45 a.m.	635 Capitol St. NE Salem, OR

Hearing Officer: Mike Govro

Stat. Auth.: ORS 561.190, 561.510-540 & 570.305

Stats. Implemented: ORS 561.510-540

Proposed Amendments: 603-052-0114

Last Date for Comment: 12-30-04

Summary: The proposed amendment would update the scientific name and the in-state distribution of Dutch elm disease by adding all Willamette Valley counties: Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington and Yamhill. An exception for tissue culture plantlets in sealed containers would be added.

**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 97310

Telephone: (503) 986-4583

NOTICES OF PROPOSED RULEMAKING

Date: 12-17-04 **Time:** 10 a.m. **Location:** 635 Capitol St. NE
Salem, OR

Hearing Officer: Mike Govro
Stat. Auth.: ORS 561.190, 561.510 - 561.540 & 570.305
Stats. Implemented: ORS 561.510 - 561.540
Proposed Amendments: 603-052-0051
Last Date for Comment: 12-30-04

Summary: The proposed amendment would require that containerized grape plants imported to the state be treated with a soil or systemic insecticide effective against pests which may be present on the roots such as vine mealybug, *Planococcus ficus*. This pest is now widespread in California, but it is not known to occur in Oregon.
**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 97310
Telephone: (503) 986-4583

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Date: 12-17-04 **Time:** 10:45 a.m. **Location:** 635 Capitol St. NE
Salem, OR

Hearing Officer: Mike Govro
Stat. Auth.: ORS 561.190, 561.510-600, 570.305 & 570.405
Stats. Implemented: ORS 570.405
Proposed Amendments: 603-052-0385
Last Date for Comment: 12-30-04

Summary: The proposed changes would update the scientific names of bean diseases covered by the Malheur County control area. In addition, Anthracnose disease would be added to the regulated list and commercial planting of small white, navy and black turtle beans would be added to the list of varieties exempt from some inspections. These changes would align Oregon's regulation with Idaho's rules governing the planting of beans for seed.
**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 97310
Telephone: (503) 986-4583

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Date: 12-17-04 **Time:** 11 a.m. **Location:** 635 Capitol St. NE
Salem, OR

Hearing Officer: Mike Govro
Stat. Auth.: 1999 OL 390
Stats. Implemented: 1999 OL 390
Proposed Amendments: 603-054-0040 – 603-054-0075
Last Date for Comment: 12-30-04

Summary: The proposed amendment would change failure or refusal to license as a Christmas tree grower or nursery from a minor violation to a moderate violation. Penalties would increase from: \$0-\$300 to \$300-\$1800.
**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 97310
Telephone: (503) 986-4583

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Date: 12-17-04 **Time:** 11:15 a.m. **Location:** 635 Capitol St. NE
Salem, OR

Hearing Officer: Mike Govro
Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305
Stats. Implemented: ORS 561.510
Proposed Amendments: 603-052-0450
Last Date for Comment: 12-30-04

Summary: The proposed changes would update the area under quarantine to include Multnomah and Clackamas counties. In addition, notification procedures would be updated to reflect requirements in OAR 603-054-0027, which mandates that importers of tree and shrub nursery stock notify the department within two days of receiving a shipment of imported nursery stock.
**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 97310
Telephone: (503) 986-4583

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Date: 12-17-04 **Time:** 11:30 a.m. **Location:** 635 Capitol St. NE
Salem, OR

Hearing Officer: Mike Govro
Stat. Auth.: ORS 561.190, 561.510-600 & 570.305
Stats. Implemented: ORS 561.510
Proposed Amendments: 603-052-0116
Last Date for Comment: 12-30-04

Summary: Proposed changes would update Oregon's quarantine against peach yellows disease. The common name of the disease would be changed from "peach yellows MLO" to "peach yellows phytoplasma." The area under quarantine would be expanded to include Texas. Civil penalty authority, recently given to the department for quarantine violations, would become part of the rule.
**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 97310
Telephone: (503) 986-4583

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Date: 12-17-04 **Time:** 10:30 a.m. **Location:** 635 Capitol St. NE
Salem, OR

Hearing Officer: Mike Govro
Stat. Auth.: ORS 561.190, 561.510-600 & 570.305
Stats. Implemented: ORS 561.510
Proposed Amendments: 603-052-0121
Last Date for Comment: 12-30-04

Summary: The proposed amendments would update the rule to account for the continued spread of apple maggot within Oregon and elsewhere in the western United States. Gilliam, Grant, Hood River, Morrow, Sherman, Umatilla and Wasco counties, which have pest-free areas with commercial apple production, would continue to be protected. A provision to allow certified shipments of apples and other covered commodities from uninfested counties of western states would be added.
**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 97310
Telephone: (503) 986-4583

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Department of Consumer and Business Services, Oregon Medical Insurance Pool Board Chapter 443

Date: 12-29-04 **Time:** 9 a.m. **Location:** 525 Trade St. SE
Lower Level Conf. Rm.
Salem, OR

Hearing Officer: Gayle Wong
Stat. Auth.: ORS 735.610
Stats. Implemented: ORS 735.600 - 735.650
Proposed Adoptions: Rules in 443-002

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: Rules in 443-001

Proposed Repeals: Rules in 443-005, 443-010, 443-015

Last Date for Comment: 12-29-04, 5 p.m.

Summary: Repealing Divisions 5, 10 and 15 and adopting Division 2 to clarify rules and put in an order that is easy to understand and that follows the procedures of the program more closely.

Amending Division 001 to make technical changes regarding rule notice and who must be contacted prior to filing new rules.

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

Rules Coordinator: Nicole Shuba

Address: Department of Consumer and Business Services, Oregon Medical Insurance Pool, 250 Church St. SE, Ste. 200, Salem, OR 97301

Telephone: (503) 378-4676

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: 437-005-0001

Last Date for Comment: 12-27-04

Summary: Federal OSHA published, in the September 15, 2004 Federal Register, changes to 29 CFR 1915, Occupational Safety and Health for Shipyard Employment. Oregon OSHA's standards must be at least as effective as federal OSHA, therefore, we are proposing to adopt the changes as published. These changes are in OR-OSHA's Division 5, Maritime Activities, and creates a new subpart P in 29 CFR 1915.

The new final standard, Fire Protection in Shipyard Employment, was developed through the negotiated rulemaking process and will provide increased protection from fire hazards for workers in the shipbuilding, ship repair and ship breaking industries. The standard reflects new technologies and current national consensus standards. It also gathers all fire-related safety practices for shipyard employment into a single subpart, which will make them more accessible and understandable for employers and employees.

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

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Proposed Amendments: 437-004-6000

Last Date for Comment: 12-27-04

Summary: The Environmental Protection Agency (EPA), published in the September 1, 2004 Federal Register, amendments to 40 CFR 170, Worker Protection Standard. EPA amended the 1992 Pesticide Worker Protection Standard to permit optional use of separable glove liners beneath chemical-resistant gloves. This amendment also makes optional the provision that agricultural pilots wear gloves when entering or leaving aircraft. All other provisions of the Worker Protection Standard are unaffected by this rule. EPA believes that these changes will reduce the cost of compliance and will increase regulatory flexibility without increasing potential risks.

Oregon OSHA proposes to adopt these changes as published. These changes are in OR-OSHA's Division 4/W, Agriculture/Worker Protection Standard.

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

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Proposed Amendments: 437-001-0001

Last Date for Comment: 12-27-04

Summary: Oregon OSHA proposes to amend OAR 437-001-0001, Model Rules of Procedure, in Division 1, General Administrative Rules. This amendment will adopt the most recent version, January 15, 2004, of the Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the Administrative Procedures Act, which is the model and guide for agency rulemaking.

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 Energy, Energy Facility Siting Council Chapter 345

Date:

1-14-05

Time:

10 a.m.

Location:

Oregon Dept. of Energy
625 Marion St. NE
Salem, OR

Hearing Officer: John Burgess

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Proposed Amendments: 345-026-0170, 345-026-0330, 345-026-0340, 345-026-0350, 345-026-0370, 345-026-0390

Proposed Repeals: 345-026-0310, 345-026-0320, 345-026-0360, 345-026-0380

Last Date for Comment: 1-14-05

Summary: Rules OAR 345-026-0170 and OAR 345-026-0300 through 0390 apply to decommissioning and spent fuel storage at the Trojan Nuclear Plant. In October 2004, Portland General Electric (PGE) completed decommissioning and completed final radiation surveys showing that the site meets federal criteria at 10 CFR 20 for unconditional release. PGE has issued the first of several final reports for technical review by Oregon Department of Energy and US Nuclear Regulatory Commission (NRC). PGE will submit the remaining survey reports in December 2004, with each report covering a different portion of the plant. Spent fuel remains stored onsite in dry casks. Proposed amendments reflect the completion of decommissioning, eliminate monitoring, fire protection, and reporting requirements that no longer apply, retain requirements for spent fuel dry storage facility monitoring, security, emergency plans, and eventual decommissioning. Trojan's final radiation survey reports are open to public review and are part of the basis for this rulemaking. The Council would adopt the proposed rules only after concluding, in consultation with the NRC, that the final radiation survey reports are satisfactory.

These amendments were requested in a petition by Portland General Electric, submitted on October 22, 2004 pursuant to OAR 137-001-0070.

Interested persons may comment at the January 14, 2005 hearing or in writing at any time before the hearing. Comments should be addressed to the Hearing Officer, and must be received by the close of the hearing. The Council will hear comments provided in person at its regularly scheduled public meeting following the hearing, before making a decision on adoption.

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

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: David Stewart Smith
Address: Department of Energy, Energy Facility Siting Council, 625 Marion St. NE, Salem, OR 97301-3737
Telephone: (503) 378-6469

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Department of Fish and Wildlife
Chapter 635

Date:	Time:	Location:
1-7-05	8 a.m.	3406 Cherry Ave. NE ODFW Commission Rm. Salem, OR

Hearing Officer: Fish and Wildlife Commission
Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.720
Proposed Amendments: 635-006-0232
Last Date for Comment: 1-7-05

Summary: Amend rules to establish the average market value of food fish species used to determine damages for commercial fishing violations during the upcoming year. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.
**Auxiliary aids for persons with disabilities are available upon advance request.*

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

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

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

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.110 & 409.010
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-122-0190, 410-122-0202, 410-122-0204, 410-122-0207, 410-122-0208, 410-122-0340, 410-122-0365, 410-122-0400, 410-122-0475, 410-122-0560, 410-122-0580, 410-122-0630, 410-122-0720
Last Date for Comment: 12-18-04, 12 p.m.

Summary: 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. OMAP will amend 410-122-0190, 410-122-0202, 410-122-0204, 410-122-0207, 410-122-0208, 410-122-0340, 410-122-0365, 410-122-0400, 410-122-0475, 410-122-0560, 410-122-0580, 410-122-0720 to reflect technical changes, code updates and word clarification. OMAP is working with provider and plan representatives to identify and implement reasonable budget reduction targets. Rule 410-122-0630 will be amended to reflect a reduction in the standard maximum allowable quantity of incontinent products, clarify related language, and reformat an existing table.

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

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Adoptions: 410-121-0032
Last Date for Comment: 12-17-04, 12 p.m.

Summary: The Pharmaceutical Services program Administrative Rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. 410-121-0032 will be adopted to establish administrative rules governing the process and procedures of establishment of Pharmaceutical manufacturer's supplemental rebates. OMAP has approval from the Centers of Medicare and Medicaid Services (CMS) to establish manufacturers supplemental rebates.

**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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Stat. Auth.: ORS 409; Other Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-121-0320
Last Date for Comment: 12-17-04, 12 p.m.

Summary: The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to clients. Rule 410-121-0320, Oregon Maximum Allowable Cost (OMAC) lists generated monthly and each list indicates the amount, per product, that OMAP will reimburse to providers for products provided to OMAP clients during that particular month. Rule 410-121-0320 is revised to include, by reference, all monthly First Health Service's OMAC listings received by OMAP for the time period of January 1, 2005 through and including December 1, 2005. Current OMAC lists are available on OMAP's website.

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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Department of Human Services,
Public Health
Chapter 333

Date:	Time:	Location:
12-21-04	1 p.m.	800 NE Oregon St. Portland State Office Bldg. Suite 120C Portland, OR

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605 - 453.807
Proposed Adoptions: Rules in 333-121
Proposed Amendments: Rules in 333-100, 333-101, 333-106, 333-116

Last Date for Comment: 12-23-04, 5 p.m.
Summary: To revise and update dental, fluoroscopy and PET/CT rules to meet current trends and emerging technologies in these fields. Also, to update and maintain compatibility with Nuclear Regulatory Commission regulations for radioactive materials, a requirement of our Agreement State status. Additional changes utilize guidance from the Suggested State Regulations for the Control of Radiation published by the Conference of Radiation Control Program Directors.

333-100 General Provisions: Add new definitions.
333-101 Registration of Radiation Machines, General License Radioactive Materials, Licensing of Radiation Services, and Accreditation of Hospital Radiology Inspectors: Change the number of training hours for x-ray vendors.

NOTICES OF PROPOSED RULEMAKING

333-106 X-rays in the Healing Arts: Revise training requirements for dental assistants, revise operator qualifications for fluoroscopic equipment, addition to Table 3 for f-speed film, add PET/CT training requirements, change to average glandular dose for mammography, and minor changes to mammography quality assurance requirements.

333-116 Use of Radionuclides in The Healing Arts: Change training requirements for PET authorized users and nuclear pharmacists, add training requirements for PET/CT operators, and implement required NRC changes from 10 CFR 35 to maintain Agreement State compatibility.

333-121 Licensing and Radiation Safety Requirements for Irradiators: New section for large irradiators.

**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

Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Stats. Implemented: ORS 433.273

Proposed Amendments: 333-050-0010, 333-050-0020, 333-050-0030, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0080, 333-050-0090, 333-050-0100, 333-050-0130, 333-050-0140

Proposed Repeals: 333-050-0010(T), 333-050-0020(T), 333-050-0030(T), 333-050-0040(T), 333-050-0050(T), 333-050-0060(T), 333-050-0080(T), 333-050-0090(T), 333-050-0100(T), 333-050-0130(T), 333-050-0140(T), 333-050-0141(T)

Last Date for Comment: 1-12-05

Summary: Amends OARs 333-050-0010, 333-050-0020, 333-050-0030, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0080, 333-050-0090, 333-050-0100, 333-050-0130, 333-050-0140 and repeals temporary OARs 333-050-0010, 333-050-0020, 333-050-0030, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0080, 333-050-0090, 333-050-0100, 333-050-0130, 333-050-0140 and 333-050-0141 relating to school immunization. With the exception of 333-050-0010, these rule changes were previously submitted to the Secretary of State's office and became effective on December 13, 2002.

The amendments further define medical exemption to differentiate between susceptibles and those who are immune; give a thirty-day grace period to provide immunization records for school children who are considered homeless; allow health departments to rescind exclusion orders for vaccines given within the four-day grace period allowed by the Advisory Committee on Immunization Practices; add additional details about the process used to approve computer-tracking systems; add language about excluding children who are susceptible from school/facility attendance in case of disease outbreak; and add language to college requirements about temporary suspension of vaccine requirements. OAR 333-050-0010 is being amended to delete definitions that duplicate statute. There is no substantive change.

A public rulemaking hearing was held on November 22, 2002 regarding these changes.

Rules Coordinator: Christina Hartman

Address: Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232

Telephone: (503) 731-4405

Department of Human Services, Self-Sufficiency Programs Chapter 461

Date: 12-22-04
Time: 10 a.m.
Location: 500 Summer St. NE
Rm. 257
Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.060 & 411.070

Proposed Amendments: 461-155-0225, 461-155-0235

Last Date for Comment: 12-22-04

Summary: Rules 461-155-0225 and 461-155-0235 are being amended to reflect the annual increase in the federal poverty levels published in the Federal Register. These rules include income and premium standards based on the federal poverty levels.

**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 97301-1066

Telephone: (503) 945-6067

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

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

Hearing Officer: Lynda Dyer

Stat. Auth.: ORS 410 & 411

Stats. Implemented: OL 2003, Ch. 736 §§15 - 51

Proposed Adoptions: 411-070-0441

Proposed Amendments: 411-070-0359, 411-070-0465, 411-070-0428

Proposed Repeals: 411-070-0440, 411-070-0446

Last Date for Comment: 12-22-04

Summary: Adopts reimbursement methodology for nursing facility per diem rates. A change to the method of determining reimbursement rates for the basic and complex medical rates paid to Nursing Facilities for Medicaid clients is required by HB 2747, passed during the 2003 legislative session and was adopted as a Temporary Rule after receipt of necessary federal approvals. These rules establish the revised methods to determine the rates, and to allocate the provider tax, also established by the HB, to cost centers for the purpose of the Medicaid cost reports required from the nursing facilities, which receive Medicaid reimbursements. House Bill 2747 required the long-term care tax and reimbursement changes be made retroactively to July 1, 2003. Since the filing of the temporary rule in May 2004, the Department has been required to obtain legal interpretation of the controlling legislation and intent of the statute delaying the permanent rulemaking process. These interpretations could have required additional changes to the proposed adoption of both the reimbursement and tax collection administrative rules. As a result changes have been made to the verbiage in the affected rules to accommodate retroactive requirements.

**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

Telephone: (503) 945-6398

Date: 12-17-04
Time: 9 a.m.
Location: 500 Summer St. NE
Rm. 137 D
Salem, OR 97301

Hearing Officer: Lynda Dyer

Stat. Auth.: ORS 410

Stats. Implemented: ORS 410.210 - 410.300

Proposed Adoptions: 411-002-0175

Last Date for Comment: 12-17-04

Summary: Chapter 411, Division 002, Rule 0175 will change the methodology to determine budget levels for Type B Area Agencies on Aging that have elected to have employment transfer.

NOTICES OF PROPOSED RULEMAKING

****This is a corrected notice.** The November 1, 2004 Bulletin states that Chapter 411-002-0170 would be amended. This announcement was in error and will be superseded by this Rulemaking Notice. **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

Telephone: (503) 945-6398

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

Date:	Time:	Location:
12-16-04	2 p.m.	500 Summer St. NE Rm. HRB-280 Salem, OR

Hearing Officer: Robert Trachtenberg

Stat. Auth.: ORS 344.530; Other Auth.: 34 CFR 361.13(c), 34 CFR 361.4(a)(5) & 34 CFR 80.32(b)

Stats. Implemented: ORS 344.530, 344.540 & 344.550

Proposed Amendments: 582-050-0050, 582-050-0060, 582-070-0040

Last Date for Comment: 1-3-05

Summary: 1. OAR 582-050-0050 and 582-050-0060 are amended to identify when OVRs services are available to non-residents. The amendments also identify when OVRs may close the case file of a client who relocates outside of Oregon.

2. OAR 582-070-0040 is amended to remove the expectation that OVRs repossess all non-expendable, non-prescription property purchased for clients and not needed for employment following a successful rehabilitation. This amendment retains the expectation of repossession for such property with an aggregate value equaling or exceeding the threshold specified. For property with a lower aggregate value than the threshold specified, OVRs would have discretion to transfer the property to the client instead of repossession.

A copy of the proposed rule may be obtained by contacting the Rules Coordinator at DHS - OVRs, 500 Summer St. NE, E87, Salem, Oregon 97301-1120 or at (503) 945-6734.

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

Rules Coordinator: Robert Trachtenberg

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

Telephone: (503) 945-6734

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**Department of Justice
Chapter 137**

Stat. Auth.: ORS 180.160 & 192.440(3)

Stats. Implemented: ORS 180.160, 192.440(3), 279.049 & 279A.065

Proposed Amendments: 137-008-0010

Last Date for Comment: 1-21-05

Summary: In part, the rule establishes the prices of Department publications. Amendment is necessary to reflect changing the name of the Attorney General's Model Public Contract Rules Manual to "Attorney General's Public Contracts Manual," and to reflect an increase in the price of the manual.

Rules Coordinator: Carol Riches

Address: Department of Justice, 1162 Court St. NE, Salem, OR 97301-4096

Telephone: (503) 378-6313

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Stat. Auth.: ORS 180.160 & 192.440(3)

Stats. Implemented: ORS 180.160, 183.341 & 192.440(3)

Proposed Amendments: 137-008-0010

Last Date for Comment: 12-24-04

Summary: In part, this rule establishes the prices of Department publications. Amendment is necessary to reflect an increase in price of the Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the APA.

Rules Coordinator: Carol Riches

Address: Department of Justice, 1162 Court St. NE, Salem, OR 97301-4096

Telephone: (503) 378-6313

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

Date:	Time:	Location:
12-16-04	9 a.m.	Office of State Fire Marshal Mt. Hood Rm. Salem, OR

Hearing Officer: John Caul

Stat. Auth.: ORS 476.030 & 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 480.165

Proposed Amendments: 837-012-0610, 837-012-0615, 837-012-0620, 837-012-0625, 837-012-0645, 837-012-0650, 837-012-0655, 837-012-0670

Last Date for Comment: 12-16-04

Summary: Upon reviewing the existing permanent rules, the following corrections and updates were made:

Revise OAR 837-012-0610(2) to update the acronym for the Bureau of Alcohol, Tobacco, and Firearms, formerly known as BATF. This federal agency is now known as the Bureau of Alcohol, Tobacco, Firearms and Explosives; therefore, the acronym should be changed to BATFE. Revise OAR 837-012-0610(24) to include specific examples of novelty items to include party poppers, pop-its, snappers, and sparklers.

Revise OAR 837-012-0615(2)(c) to change Oregon Uniform Fire Code to Oregon Fire Code.

Revise OAR 837-012-0620(3), which currently references OAR 837-012-0630(4). The reference needs to be changed to (3).

Revise OAR 837-012-0625(3) to raise the permit fee from \$50 to \$75.

Revise OAR 837-012-0645(9)(d) to change Oregon Uniform Fire Code to Oregon Fire Code.

Revise OAR 837-012-0650(6) to delete the word "the" in last sentence and (12) to change the distance of ignition sources or igniting fireworks outside a retail fireworks sales area from 50 feet to 100 feet.

Revise OAR 837-012-0655(3) to delete "_" (the underscore) between the words "if" and "applicable."

Revise OAR 837-012-0670(7) to correct grammatical errors.

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

Rules Coordinator: Pat Carroll

Address: Oregon State Police, Office of State Fire Marshal, 4760 Portland Rd. NE, Salem, OR 97305

Telephone: (503) 373-1540, ext. 276

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Date:	Time:	Location:
12-16-04	1 p.m.	4760 Portland Rd. NE Salem, OR

Hearing Officer: John Caul

Stat. Auth.: ORS 476.030, 480.230, 480.244 & 480.280

Stats. Implemented: ORS 480.010 - 480.290

Proposed Amendments: 837-012-1230

Last Date for Comment: 12-16-04, 5 p.m.

Summary: This rule revision is to increase the fees for explosives examinations and magazine registrations. The current fees for the explosive program do not cover the program costs.

Revise OAR 837-012-1230(4)(b) to increase the examination fee from \$30 to \$40.

NOTICES OF PROPOSED RULEMAKING

Revise OAR 837-012-1230(4)(c) to increase the magazine registration with Office of State Fire Marshal inspection from \$125 to \$175.

Revise OAR 837-012-1230(4)(d) to increase the magazine registration with acceptance of BATFE inspection from \$50 to \$75.

Stakeholder input has been supportive of this fee increase. DAS has also given approval.

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

Rules Coordinator: Pat Carroll

Address: Oregon State Police, Office of State Fire Marshal, 4760 Portland Rd. NE, Salem, OR 97305

Telephone: (503) 373-1540, ext. 276

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Date:	Time:	Location:
12-16-04	10:30 a.m.	Office of State Fire Marshal Mt. Hood Rm. Salem, OR

Hearing Officer: John Caul

Stat. Auth.: ORS 476.030, 480.110 - 480.165

Stats. Implemented: ORS 480.110 - 480.165

Proposed Amendments: 837-012-0750

Last Date for Comment: 12-16-04

Summary: Revise OAR 837-012-0750 to raise the permit fee from \$50 to \$75. Previous administrative hearings have been held with industry members, fire service, and the Office of State Fire Marshal.

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

Rules Coordinator: Pat Carroll

Address: Oregon State Police, Office of State Fire Marshal, 4760 Portland Rd. NE, Salem, OR 97305

Telephone: (503) 373-1540, ext. 276

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Department of Transportation Chapter 731

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 200.035, 200.065, 200.075, 279A, 279A.005, 279A.030, 279A.065, 279A.100 - 279A.125, 279C, 279C.100 - 279C.110, 279C.300, 279C.305, 279C.315, 279C.335, 279C.345, 279C.355 - 279C.395, 279C.430 - 279C.460, 279C.500 - 279C.870, 305.385, 671.530, 701.005, 701.055, 701.420 & sec. 334 & 336, Ch. 794, OL 2003

Proposed Adoptions: 731-005-0400 - 731-005-0790, 731-007-0200 - 731-007-0400

Proposed Repeals: 731-005-0001 - 731-005-0365, 731-007-0010 - 731-007-0190

Last Date for Comment: 12-21-04

Summary: During the last legislative session, ORS 279, the chapter that governs construction contracts, was revised and reorganized into three chapters — ORS 279A, ORS 279B and ORS 279C by HB 2341 (chapter 794, Oregon Laws 2003). As a result, all administrative rules adopted under authority of ORS 279 will be repealed on March 1, 2005. The text of ODOT's existing administrative rules in Chapter 731, Divisions 5 and 7, with minor changes to align language with the new statutes, is being adopted as new rules, as required by chapter 794, Oregon Laws 2003.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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

Date:	Time:	Location:
12-21-04	1:30 p.m.	355 Capitol St. NE Dept. of Transportation Bldg. Rm. 122 Salem, OR

Hearing Officer: David Eyerly

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.030 & 803.035

Stats. Implemented: ORS 803.010, 803.030, 803.035, 803.040, 803.045 & 803.092

Proposed Adoptions: 735-022-0120

Proposed Repeals: 735-168-0070

Last Date for Comment: 12-21-04

Summary: ORS 803.035 authorizes DMV to adopt rules for the optional titling of vehicles that are not subject to vehicle titling requirements under ORS 803.025 or that are exempt from vehicle titling requirements by ORS 803.030. DMV is proposing to adopt an optional titling rule for the following reasons: • Many vehicles currently exempt from Oregon title requirements have dramatically increased in sales volume and purchase price. Consequently, many vehicle consumers are now financing the purchase of their vehicles through banks, credit unions and other lending institutions. • The adoption of this rule will authorize eligible out-of-state residents to obtain Oregon titles to vehicles eligible for title under this rule, if the issuance of an Oregon title does not violate the law of the jurisdiction in which the resident resides. • To protect the financial and ownership interests of vehicle owners, lending institutions and vehicle dealers, OAR 735-022-0120 is adopted to explain:

a) When DMV may optionally title a vehicle that is exempt from titling requirements under ORS 803.030;

b) The effect of title and the requirements for a vehicle and the owner of a vehicle optionally titled under section (2) of the rule; and

c) The specific vehicle categories and types that are not eligible to be optionally titled.

OAR 735-168-0070 (Class I and III ATVs - Optional Title Requirements) is repealed because the requirements for the optional titling of Class I and III ATVs have been added to the proposed new optional titling rule (OAR 735-022-0120.).

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

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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Stat. Auth.: ORS 184.616, 184.619, 802.010 & 813.600

Stats. Implemented: ORS 813.600

Proposed Amendments: 735-118-0000, 735-118-0010, 735-118-0030

Last Date for Comment: 12-21-04

Summary: These rules outline the requirements for ignition interlock devices (IID) and the manufacturers of those devices. These proposed amendments add a separate definition in OAR 735-118-0000 for a manufacturer and a provider. Proposed amendments to OAR 735-118-0010 clarify that it is the manufacturer that must certify that the IID that they manufacture meets the requirements of ORS 813.600(2) and OAR 735-118-0040 and that DMV will publish a list of the devices that meet the requirements and of the providers of those devices.

The proposed amendments to OAR 735-118-0030 remove sections (2) and (3) regarding notification and review rights. DMV is merely publishing a list of approved devices. Manufacturers are not entitled to an administrative review upon removal of its devices from DMV's list. Publishing a list of approved devices does not create

NOTICES OF PROPOSED RULEMAKING

rights for the manufacturer that would entitle it to a hearing or any administrative process. Sections (4) and (5) are being removed as DMV has no authority to require that the costs of removal and installation of new devices be placed on the manufacturer if that manufacturer's devices no longer meet the qualifications to be on the list of approved devices.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.050, 807.150 & 807.400

Stats. Implemented: ORS 807.050, 807.062, 807.150, 807.160, 807.220, 807.230, 807.280 & 807.400

Proposed Amendments: 735-062-0020, 735-062-0030

Last Date for Comment: 12-21-04

Summary: OAR 735-062-0020 outlines acceptable proof of an applicant's age and identity when applying to DMV for an original, renewal or replacement driver permit, driver license or identification card. On January 1, 2004, DMV tightened the proof of age and identity requirements for national security purposes and to address the growing problem of identity theft and fraud by amending OAR 735-062-0020. DMV has determined that it is necessary to amend OAR 735-062-0020 to add more identity verification methods for persons applying for renewals and replacements, to clarify the type of documentation necessary when the person's name has changed, and to add more documents to the list of acceptable primary and secondary documents. DMV has determined these rule changes will assist DMV in the verification of age and identity when issuing a driver license, driver permit or identification card. The proposed amendments to OAR 735-062-0030 are needed to correctly reflect references to the amended OAR 735-062-0020. These rules have been in place as temporary rules since October 1, 2004.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

Department of Transportation, Highway Division Chapter 734

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279A.005, 279C.300, 279C.430, 279C.440 & sec. 334 and 336, Ch. 794, OL 2003

Proposed Adoptions: 734-010-0200 – 734-010-0380

Proposed Repeals: 734-010-0010 – 734-010-0170

Last Date for Comment: 12-21-04

Summary: During the last legislative session, ORS 279, the chapter that governs construction contracts, was revised and reorganized into three chapters — ORS 279A, ORS 279B and ORS 279C by HB 2341 (chapter 794, Oregon Laws 2003). As a result, all administrative rules adopted under authority of ORS 279 will be repealed on March 1, 2005. The text of ODOT's existing administrative rules in Chapter 734, Division 10, with minor changes to align language with the new statutes, is being adopted as new rules, as required by chapter 794, Oregon Laws 2003.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

Employment Department Chapter 471

Date:

12-16-04

Time:

1 p.m.

Location:

875 Union NE

Employment Dept. Auditorium
Salem, OR 97311

Hearing Officer: Richard Luthe

Stat. Auth.: ORS 183, 657.457, 657.610 & Ch. 778, OL 1993

Stats. Implemented: ORS 657.457 & ORS 657.504 - 657.575

Proposed Amendments: Rules in 471-031

Last Date for Comment: 12-16-04, 5 p.m.

Summary: The Employment Department is proposing to amend: OAR 471-031-0070 to clarify that domestic employers may report and pay annually.

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

Rules Coordinator: Richard L. Luthe

Address: Employment Department, 875 Union St. NE, Salem, OR 97311

Telephone: (503) 947-1724

Employment Department, Child Care Division Chapter 414

Stat. Auth.: ORS 657.610 & 657A.030(7)

Stats. Implemented: ORS 657A.030

Proposed Amendments: 414-061-0080

Last Date for Comment: 12-16-04, 5 p.m.

Summary: The Employment Department, Child Care Division is proposing to amend: OAR 414-061-0080 to change from "two" to "one" the number of properly completed FBI fingerprint cards required under the rule.

Rules Coordinator: Richard L. Luthe

Address: Employment Department, Child Care Division, 875 Union St. NE, Rm. 310, Salem, OR 97311

Telephone: (503) 947-1724

Health Licensing Office Chapter 331

Date:

1-21-05

Time:

9 a.m.

Location:

700 Summer St.

Rhoades Conf. Rm.
Salem, OR

Hearing Officer: Bert Krages

Stat. Auth.: OL 1999, Ch. 736, Sec. 5; Other Auth.: ORS 676.605

Stats. Implemented: ORS 676.605 & OL 1999, Ch. 736, Sec. 5

Proposed Amendments: 331-105-0020, 331-120-0020

Last Date for Comment: 1-21-05

Summary: Rules are being amended to add clarification to the statutory definition in OL 1999, Chapter 736, Section 1, subsection 1 pertaining to "athlete" to further identify meaning and intent of activities and settings, i.e. "generally conducted in association with" in performance of services. Additional clarification is being added to provisions pertaining to standards of practice for athletic trainers to set parameters for practitioners in treating injuries within the athletic trainers competency.

Administrative Rules are available on the agency's website — www.hlo.state.or.us. Material is available in alternative formats. Please contact Samie Patnode, at 503-378-8667, extension 4323 for additional information.

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

Rules Coordinator: Patricia C. Allbritton

NOTICES OF PROPOSED RULEMAKING

Address: Health Licensing Office, 700 Summer St. NE, Ste. 320, Salem, OR 97302
Telephone: (503) 378-8667, ext. 4322

Stat. Auth.: ORS 676.605, 676.615, 688.815 & 688.830; Other Auth.: ORS 183

Stats. Implemented: ORS 688.815 & 688.830

Proposed Amendments: 331-710-0010, 331-715-0010, 331-720-0010

Last Date for Comment: 12-28-04

Summary: The current rules do not address a mechanism for renewal/reinstatement of a license if a licensee fails to obtain the required continuing education hours every two years as a condition of licensure, or lets the license remain in an expired status beyond two years. The rule revision is necessary to prevent individual's employment and/or licensing status being adversely affected as licensure is required for practicing respiratory care in Oregon. The proposed rule provides an alternative to meeting continuing education requirements while still ensuring continued competency of professionals working as respiratory care therapists in Oregon. It also removes artificial barriers to individuals licensed as respiratory therapists in another state in active practice a means to qualify for Oregon licensure. Individuals may provide proof of licensure and active practice in another state, or evidence of completion of the national examination within one year preceding date of application for renewal/reinstatement.

Rules Coordinator: Patricia C. Allbritton

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

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

Land Conservation and Development Department Chapter 660

Date:	Time:	Location:
12-8-04	1:15 p.m.	635 Capitol St. NE Agriculture Bldg. Basement Hearing Rm. Salem, OR
1-4-05	7-9 p.m.	30975 NW Hillcrest St. Jesse May Community Center North Plains, OR
2-3-05	10:30 a.m.	635 Capitol St. NE Agriculture Bldg. Basement Hearing Rm. Salem, OR

Hearing Officer: LCDC Staff

Stat. Auth.: ORS 197.040 - 197.047

Stats. Implemented: ORS 195, 197.175, 197.225 - 197.250, 197.296 - 197.298, 197.732 & 197.752 - 197.754

Proposed Adoptions: Rules in 660-024

Proposed Amendments: 660-015-0000, Rules in 660-004, 660-026
Last Date for Comment: 2-3-05, LCDC hearing

Summary: The proposed amendments to Statewide Planning Goal 14 (Under OAR 660, Division 015) will modify current requirements for adopting or amending an Urban Growth Boundary (UGB), will eliminate the requirement for the exceptions process in the adoption or amendment of a UGB, will modify some factors regarding land need and boundary location, will modify related definitions and other provisions. The proposed new administrative rules under OAR 660, Division 024, will provide detailed procedures and standards for adopting or amending a UGB and for interpreting Goal 14. Finally, OAR 660, Division 004, and OAR 660, Div. 026, will be amended to remove or modify provisions pertaining to the exceptions process currently required in amending a UGB. That rule may also be modified to allow UGB amendments in certain circumstances not allowed by Goal 14.

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

Rules Coordinator: Shelia Preston

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

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

Date:	Time:	Location:
12-9-04	8:30 a.m.	635 Capitol St. NE Agriculture Bldg. Basement Hearing Rm. Salem, OR
1-4-05	7-9 p.m.	30975 NW Hillcrest St. Jesse May Community Center North Plains, OR
2-3-05	9 a.m.	635 Capitol St. NE Agriculture Bldg. Basement Hearing Rm. Salem, OR

Hearing Officer: LCDC Staff

Stat. Auth.: ORS 197.040 & 197.245

Stats. Implemented: ORS 197.175, 197.712, 197.757, 197.768 & 215.275

Proposed Amendments: 660-011-0060

Last Date for Comment: 2-3-05

Summary: The proposed amendments to Statewide Planning Goal 11 (OAR 660-015-0000(11)) and related administrative rules under OAR 660-011-0060 would authorize sewer hookups to existing residential lots outside urban growth boundaries within current sewer district boundaries and within 300 feet of an existing sewer line.

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

Rules Coordinator: Shelia Preston

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

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

Landscape Architect Board Chapter 804

Date:	Time:	Location:
12-17-04	1 p.m.	1193 Royvonne SE Board Rm. A Salem, OR 97302

Hearing Officer: Staff

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.395

Proposed Adoptions: 804-025-0000, 804-025-0010, 804-025-0020

Proposed Amendments: 804-001-0002, 804-001-0015, 804-003-0000, 804-010-0000, 804-020-0055, 804-030-0011, 804-030-0015, 804-030-0020, 804-040-0000

Proposed Repeals: 804-001-0014, 804-010-0010, 804-030-0060

Last Date for Comment: 12-17-04

Summary: These rules establish requirements for the registration of landscape architect businesses, landscape architects in training, and 'emeritus' status, requirements for continuing education, fees for the new designations, a change in the requirements for taking the landscape architect registration exam, and provisions for additional board members.

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

Rules Coordinator: Leslie Clement

Address: Landscape Architect Board, 1193 Royvonne Ave SE, Suite 19, Salem, OR 97302

Telephone: (503) 589-0093

Oregon Board of Dentistry Chapter 818

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.250

Proposed Adoptions: 818-026-0055

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 818-026-0000, 818-026-0010, 818-026-0020, 818-026-0030, 818-026-0035, 818-026-0040, 818-026-0050, 818-026-0060, 818-026-0070, 818-026-0080, 818-026-0100, 818-026-0110, 818-026-0120, 818-026-0130

Last Date for Comment: 12-22-04

Summary: Rule changes bring the Board's anesthesia rules in line with the recommendations of the American Dental Association, "Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists." Specifically, Class 2 permit requirements are changed to cover any combination of sedative agents that produce conscious sedation and Class 3 permit is amended to require a higher level of life support training and certification (ACLS or PALS). A new rule is added to allow dental hygienists and dental assistants to provide care within the scope of their license/certification for patients under Conscious Sedation. Clarification is made in the rules that Health Care Provider BLS/CPR certification may be "or equivalent" and that the certification must be kept current. Changes are also made regarding the continuing education requirements for maintaining an anesthesia permit. Other minor changes are made to add definitions, to clarify the Board's position that no anesthesia permit is required when a single sedative is provided for anxiolysis only, and to further conform the Board's rules with the ADA "Guidelines" referred to above.

A Certificate and Order for Filing Permanent Administrative Rules to adopt and amend these rules was filed with the Secretary of State on September 15, 2003, with an effective date of October 1, 2003. It is necessary to again provide Notice of Proposed Rulemaking because the amended rule was not filed with the Legislative Council Committee within the ten-day period required by ORS 183.715.

This Notice of Proposed Rulemaking is being filed because an error was found on the Statement of Need and Fiscal Impact that was dated and filed on September 9, 2004.

Copies of the full text of proposed changes can be found on the Board's Web site (www.oregon.gov/Dentistry) under What's New or by calling the Board of Dentistry at (503) 229-5520.

Rules Coordinator: Sharon Ingram

Address: Oregon Board of Dentistry, 1600 SW 4th Ave., Ste. 770, Portland, OR 97201

Telephone: (503) 229-5520

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**Oregon Department of Education
Chapter 581**

Date:	Time:	Location:
12-21-04	3 p.m.	255 Capitol St. NE Public Service Bldg. Rm. 251-A Salem, OR

Hearing Officer: Mike Reed

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Proposed Amendments: 581-011-0118

Last Date for Comment: 12-21-04

Summary: ORS 337.035 requires the State Board of Education to adopt criteria for the selection and adoption of instructional materials. Instructional materials for the Arts are to be adopted in 2005. A committee of teachers from around the state met in November to review the Arts criteria from the last adoption cycle and develop new criteria for the upcoming adoption cycle. The committee compiled new criteria and recommends these criteria to the State Board for adoption.

For information regarding this rule, please contact Randy Harnisch at (503) 378-3600, ext. 2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Debby Ryan at (503)378-3600, 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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**Oregon Liquor Control Commission
Chapter 845**

Date:	Time:	Location:
1-4-05	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 471.750(1)

Proposed Amendments: 845-015-0143

Last Date for Comment: 1-18-05

Summary: Retail sales agents are authorized to make package sales of distilled spirits. Exclusive agents may only sell distilled spirits and the related items authorized by this rule. This rule describes the related items an exclusive retail sales agent may sell in a retail liquor store - related items include ice, mixers, tobacco products, foods used in drinks, and glassware. The agency intends to amend the rule to add "liquor branded logo giftware and apparel" to the list of related items allowed for sale in exclusive retail sales agencies.

**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

Telephone: (503) 872-5004

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**Oregon Public Employees Retirement System
Chapter 459**

Date:	Time:	Location:
12-28-04	2 p.m.	11410 SW 68th Pkwy. PERS Headquarters Boardroom Tigard, OR

Hearing Officer: David K. Martin

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 237.620

Proposed Amendments: 459-030-0011, 459-030-0025, 459-030-0030

Proposed Repeals: 459-030-0000, 459-030-0001

Last Date for Comment: 1-28-05

Summary: ORS 237.620 provides that all public employers of police officers and firefighters must participate in PERS with respect to those employees. However, Section (4) exempts a public employer from this requirement if it provides an alternative retirement plan that is "equal to or better than" (ETOB) PERS' retirement benefits. A 2003 legislative change to the statute added the requirement that the Public Employees Retirement Board shall test ETOB employers every two years to determine whether the public employer complies with the ETOB requirements. The proposed rule modifications clarify the testing process for ETOB employers.

Copies of the proposed rules are available to any person upon request. The rules are also available at www.pers.state.or.us. Public comment may be mailed to the above address or sent via email to David.Martin@state.or.us.

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

Rules Coordinator: David K. Martin

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

Telephone: (503) 603-7713

NOTICES OF PROPOSED RULEMAKING

Date: 12-28-04
Time: 2 p.m.
Location: 11410 SW 68th Pkwy.
PERS Headquarters
Boardroom
Tigard, OR

Hearing Officer: David K. Martin
Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.015
Proposed Adoptions: 459-010-0014
Last Date for Comment: 1-28-05

Summary: PERS members receive "creditable service" for "full months and major fractions of a month" under the definition at ORS 238.005(5). While the need to serve 600 hours in a year as a requirement for membership is well recognized (see ORS 238.015(4)), reducing that standard to a month-to-month crediting of service has varied over time with agency administration. This rule articulates the standards by which creditable service would be granted to members in the PERS Chapter 238 Plan.

Copies of the proposed rules are available to any person upon request. The rules are also available at www.pers.state.or.us. Public comment may be mailed to the above address or sent via email to David.Martin@state.or.us.

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

Rules Coordinator: David K. Martin
Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281-3700
Telephone: (503) 603-7713

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Oregon State Marine Board
Chapter 250

Stat. Auth.: ORS 830.110
Stats. Implemented:
Proposed Amendments: 250-015-0001 – 250-015-0030
Last Date for Comment: 12-31-04

Summary: The periodic review of Marine Board Charter Vessel rules revealed housekeeping amendments necessary to cite current Code of Federal Regulations in the charter vessel rules. The Board will accept comments through December and consider final language at the January 2005 meeting.

Rules Coordinator: Jill E. Andrick
Address: Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065
Telephone: (503) 373-1405, ext. 243

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Oregon University System
Chapter 580

Date: 12-16-04
Time: 10–11 a.m.
Location: 1431 Johnson Ln.
(UO Campus)
3rd Flr. Conference Rm.
Eugene, OR

Hearing Officer: Donna Niegel
Stat. Auth.: ORS 351
Stats. Implemented:
Proposed Amendments: 580-040-0035
Last Date for Comment: 12-20-04

Summary: To establish tuition and fees for the Summer Session 2005, including room and board rates.

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

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

Oregon Youth Authority
Chapter 416

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.010
Proposed Amendments: 416-250-0000, 416-250-0010, 416-250-0020, 416-250-0030, 416-250-0040, 416-250-0050, 416-250-0060, 416-250-0070, 416-250-0080, 416-250-0090
Last Date for Comment: 12-28-04

Summary: These rules are being amended to revise and update language usage. Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

Rules Coordinator: Kimberly Walker
Address: Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 378-3864

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Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 419C, 420 & 420A
Proposed Adoptions: 416-170-0050
Proposed Amendments: 416-170-0000, 416-170-0010, 416-170-0020, 416-170-0030
Last Date for Comment: 12-28-04

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
Telephone: (503) 378-3864

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Parks and Recreation Department
Chapter 736

Stat. Auth.: ORS 390.180(1)(c)
Stats. Implemented: ORS 390.180(1)(c)
Proposed Amendments: 736-018-0045
Last Date for Comment: 12-21-04

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

The master plan responds to the most current information on park resource conditions and public recreation needs as they pertain to this park. The plan was formulated through OPRD's mandated master planning process involving meetings with the general public, a steering committee, affected state and federal agencies and Polk County.

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

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Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.121 & 390.124
Proposed Amendments: 736-010-0005, 736-010-0015, 736-010-0020, 736-010-0025, 736-010-0026, 736-010-0027, 736-010-0030, 736-010-0035, 736-010-0040, 736-010-0050, 736-010-0055, 736-010-0060, 736-010-0065, 736-015-0010, 736-015-0015, 736-015-0020, 736-015-0030, 736-015-0035
Proposed Repeals: 736-010-0075, 736-010-0080, 736-010-0085, 736-015-0055, 736-015-0060, 736-015-0075, 736-015-0085, 736-

NOTICES OF PROPOSED RULEMAKING

015-0093, 736-015-0102, 736-015-0105, 736-015-0115, 736-015-0120, 736-015-0125, 736-015-0140, 736-015-0155

Proposed Ren. & Amends: 736-010-0010 to 736-010-0005, 736-010-0045 to 736-010-0040, 736-010-0070 to 736-010-0040, 736-010-0098 to 736-015-0010, 736-010-0099 to 736-015-0015, 736-010-0100 to 736-015-0020, 736-010-0115 to 736-015-0030, 736-010-0120 to 736-015-0035, 736-010-0125 to 736-015-0040, 736-015-0045 to 736-010-0040, 736-015-0050 to 736-010-0030, 736-015-0058 to 736-010-0060, 736-015-0063 to 736-010-0060, 736-015-0065 to 736-010-0055, 736-015-0067 to 736-010-0040, 736-015-0070 to 736-010-0060, 736-015-0072 to 736-010-0055, 736-015-0080 to 736-010-0055, 736-015-0090 to 736-010-0055, 736-015-0095 to 736-010-0055, 736-015-0097 to 736-010-0060, 736-015-0100 to 736-010-0055, 736-015-0110 to 736-010-0065, 736-015-0130 to 736-010-0055, 736-015-0135 to 736-010-0055, 736-015-0144 to 736-010-0060, 736-015-0146 to 736-010-0055, 736-015-0148 to 736-010-0060, 736-015-0150 to 736-010-0055, 736-015-0160 to 736-010-0055

Last Date for Comment: 12-31-04

Summary: Amendments to the existing rules will update the listed rates to reflect current charges; waive day-use and camping fees for foster parents; waive day-use and camping fees for disabled veterans or active duty military personnel on Memorial Day, Independence Day and Veterans Day; allow use by Tribal members who wish to conduct traditional cultural, religious or community ceremonies or activities; allow an individual or group to provide in-kind services or materials in lieu of fees, such as trail maintenance in exchange for a one night camping fee; waive, exempt, or reduce fees when in there is a benefit to the Department either through marketing, promotion of Oregon State Parks or promotion of Oregon tourism; and reduce fees when service levels fall below normal standards.

Rules Coordinator: Jo Bell

Address: Parks and Recreation Department, 725 Summer St. NE, Ste. C, Salem, OR 97301

Telephone: (503) 986-0719

**Public Utility Commission
Chapter 860**

Stat. Auth.: ORS 183 & 756.060; Other Auth.: 47 USC §252

Stats. Implemented: ORS 756.040, 756.518, 759.030(1), ORS 759.455 & Ch. 1093, OL 1999

Proposed Amendments: 860-016-0050

Last Date for Comment: 12-24-04

Summary: Current OAR 860-016-0050(11)(d) reads: "If a party requests a hearing, a hearing shall begin no later than 30 days after the complaint is filed." This rulemaking changes that provision to take out the beginning phrase. Instead, the rule will read: "A hearing shall begin no later than 30 days after the complaint is filed." This new rule will more closely match ORS 759.455(2)(c).

Rules Coordinator: Diane Davis

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

Telephone: (503) 378-4372

**Teacher Standards and Practices Commission
Chapter 584**

Date:	Time:	Location:
1-13-05	3 p.m.	Willamette University Salem, OR

Hearing Officer: TSPC Chair

Stat. Auth.: ORS 342.165

Stats. Implemented: ORS 342.125, 342.136, 342.138 & 342.147

Proposed Adoptions: 584-017-0251, 584-017-0261, 584-060-0012, 584-060-0013, 584-060-0022, 584-070-0130, 584-070-0410, 584-080-0171

Proposed Amendments: 584-005-0005, 584-017-0250, 584-017-0260, 584-060-0011, 584-060-0161, 584-060-0171, 584-060-0210, 584-070-0111, 584-100-0071

Last Date for Comment: 1-13-05, 5 p.m.

Summary: 584-005-0005: Amend existing rules on definitions and moves definitions to applicable division(s).

584-017-0250: Amend current standards for Initial Administrator License to indicate date when no longer effective.

584-017-0251: Adopt new rule adopting new standards for the Initial Administrator's License.

584-017-0260: Amend current standards for Continuing Administrator License to indicate date when no longer effective.

584-017-0261: Adopt new rule adopting new standards for the Continuing Administrator's License.

584-060-0011: Amend Initial Teaching License rule to eliminate limitation on renewals.

584-060-0012: Adopt new rule for the Initial Teaching License, spells out requirements and effective date.

584-060-0013: Adopt new rule for the renewal of the Initial Teaching License, spells out requirements for ongoing renewal.

584-060-0022: Adopt new rule for the Continuing Teaching License, makes license optional (was required).

584-060-0161: Amend existing rule to restore Transitional License to three year license from one year license.

584-060-0171: Amends existing rule to allow issuance of Limited Teaching License in areas where an endorsement is not offered.

584-060-0210: Amend Emergency Teaching License to clarify language and implementation.

584-070-0111: Amend Transitional School Counselor License to include housekeeping changes and language clarification.

584-070-0130: Adopt new rule for Emergency School Counselor License.

584-070-0410: Adopt new rule for Emergency School Psychologist License.

584-080-0171: Adopt new rule for Emergency School Administrator License.

584-100-0071: Amend Highly Qualified Middle-Level Special Education Teacher remove provisions prohibited by federal law.

Copies of the above proposed administrative rules are available on the TSPC Web Site at www.tspc.state.or.us

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

Rules Coordinator: Victoria Chamberlain

Address: Teacher Standards and Practices Commission, 465 Commercial St. NE, Salem, OR 97301

Telephone: (503) 378-6813

Date:	Time:	Location:
1-13-05	3 p.m.	Willamette University Salem, OR

Hearing Officer: TSPC Chair

Stat. Auth.: ORS 342.165

Stats. Implemented: ORS 342.120 - 342.143, 342.147, 342.153, 342.165 & 342.223 - 342.232

Proposed Adoptions: 584-017-0115, 584-017-0125, 584-017-0135, 584-065-0060, 584-065-0070, 584-065-0080, 584-065-0090, 584-065-0100, 584-065-0110, 584-065-0120

Proposed Amendments: 584-017-0350, 584-070-0239

Last Date for Comment: 1-13-05, 5 p.m.

Summary: 584-017-0115 Adopt new rule for Early Childhood Education Authorization, spells out objectives.

584-017-0125 Adopt new rule for Elementary Education Authorization, spells out objectives.

584-017-0135 Adopt new rule for Middle Education Level Authorization, spells out objectives.

584-017-0350 Amend existing rule for Initial School Psychologist, spell out objectives.

NOTICES OF PROPOSED RULEMAKING

584-065-0060 Adopt new rule adopting new standards for Physical Education programs as part of teacher preparation programs.

584-065-0070 Adopt new rule adopting new standards for Health Education programs as part of teacher preparation programs.

584-065-0080 Adopt new rule adopting new standards for Basic Mathematics programs as part of teacher preparation programs.

584-065-0090 Adopt new rule adopting new standards for Advance Mathematics programs as part of teacher preparation programs.

584-065-0100 Adopt new rule adopting new standards for Language Arts programs as part of teacher preparation programs.

584-065-0110 Adopt new rule adopting new standards for Social Studies programs as part of teacher preparation programs.

584-065-0120 Adopt new rule adopting new standards for Integrated Science programs as part of teacher preparation programs.

584-070-0239 Amend existing rule to adopt new standards for Initial School Psychologist programs as part of teacher preparation programs.

Copies of the above proposed administrative rules are available on the TSPC Web Site at www.tspc.state.or.us
**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Victoria Chamberlain

Address: Teacher Standards and Practices Commission, 465 Commercial St. NE, Salem, OR 97301

Telephone: (503) 378-6813

ADMINISTRATIVE RULES

Board of Geologist Examiners Chapter 809

Adm. Order No.: BGE 9-2004

Filed with Sec. of State: 10-19-2004

Certified to be Effective: 10-19-04

Notice Publication Date: 5-1-04, 9-1-04

Rules Amended: 809-003-0000

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

The definition of "misconduct" is being revised. Misconduct is a violation of the Board's Code of Professional Conduct, as well as a violation of any state or federal statute in the practice of geology, and assisting another to violate state or federal rules or statutes. The term misconduct was previously defined as mismanagement, improper behavior, violation of law or standard. By referencing in the definition of misconduct the Board's Code of Professional Conduct, interested parties can refer to that Administrative Rule (OAR 809, Division 20) and find many specific examples of misconduct.

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

809-003-0000

Definitions

The definitions of terms used in ORS 672.505 to 672.991, and the rules of this OAR Chapter 809, are:

(1) "ASBOG": national Association of State Boards of Geologists; an organization of state boards that regulate the public practice of geology; ASBOG prepares the national geology examination.

(2) "Deceit": An attempt to portray as true or valid something that is untrue or invalid.

(3) "Equivalent of 45 quarter hours": 30 semester hours.

(4) "Expert Opinion": An opinion tendered to a court, commission, hearings officer, or other tribunal which is considered to be expert testimony by virtue of the professional experience, training, and registration and certification of the geologist tendering the opinion.

(5) "Falsely Impersonate": To assume without authority or with fraudulent intent the identity of another person.

(6) "False or Forged Evidence": Untrue documents purporting to be proof, or falsely and fraudulently altered proof.

(7) "Felony": A crime declared a felony by statute because of the punishment imposed.

(8) "Fraud": Intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right.

(9) "Gross Negligence": Reckless and wanton disregard for exercising care and caution.

(10) "Incompetence": Inadequacy or unsuitability for effective action. The Board shall consider incompetence in the practice of geology to include, but not be limited to instances where a geologist has been adjudicated mentally incompetent by the court; been engaged in conduct which shows a lack of ability or fitness to discharge the duties and responsibilities a geologist owes a client, employer, or the general public; or been engaged in conduct which shows a lack of knowledge, or inability, to apply the principles or skills of the profession.

(11) "Misconduct": Violation of the Code of Professional Conduct adopted by the Board, or any state or federal rule or statute in the course of the practice of geology, or aiding or abetting any person to violate any state or federal rule or statute in the course of the practice of geology.

(12) "Mutual Recognition": When one state allows a geologist who is registered in another state to perform work in that state without obtaining local registration.

(13) "National examination": prepared by ASBOG and comprised of a four-hour fundamental section and a four-hour practice section.

(14) "Neglect of Duty": Lack of attention to the performance or services that arise from one's position.

(15) "Negligence": Failure by a licensee to exercise the care, skill, and diligence demonstrated by Professional Geologists under similar circumstances in the community in which the licensee practices.

(16) "Official Transcript": Transcript certified by the school and received under seal.

(17) "Project": A contractually specified scope and amount of geologic work relating to a specific undertaking, such as, but not limited to, the geologic reconnaissance of an area, a geohydrologic study of an area, or an analysis of volcanic hazards from a volcano.

(18) "Proprietary": Belonging to a client, employer or geologist.

(19) "Public proceeding": as used in ORS 672.525(9) means a public forum where members of the public are invited to comment or testify or permitted to comment or testify.

(20) "Reciprocity": When one state will issue a registration to a geologist because the geologist holds a registration in another state.

(21) "Reinstatement of Registration": One-time process to bring a lapsed registration or certification to current, valid status.

(22) "Related Geological Science": A course of study that includes at least 36 quarter hours, or the equivalent, in geological subjects taken in the third or fourth year or in graduate courses.

(23) "Renewal of Registration": Annual process to maintain the current status of a valid registration or certification.

(24) "Third or Fourth Year": Upper division college classes.

(25) "Threat to the Public Health, Welfare, or Property": A threat of geologic nature such as, but not limited to, induced or imminent instability of a slope, exacerbation of or continuation of a high rate of erosion, flood hazard or land subsidence, ongoing or potential contamination of underground or surface waters. Also a potential threat which would be induced by an action taken in ignorance of, or without regard to geologic conditions such as construction of residences or other structures intended for habitation in areas prone to landslides, mudflows, volcanic eruption, or earthquakes without proper mitigatory measures, or construction of dams or other waterworks, bridges, powerplants or other critical facilities without exhaustive investigation of potential geologic hazards and incorporation of approved mitigatory measures into their design.

(26) "Year of Study": 36 quarter hours or 24 semester hours.

Stat. Auth.: ORS 183, 192 & 672

Stats. Implemented: ORS 183.341, 183.355, 183, 192 & 672

Hist.: GE 1-1984, f. & ef. 2-1-84; GE 3-1984, f. & ef. 12-4-84; GE 4-1984, f. & ef. 12-18-84; GE 1-1985, f. & ef. 7-1-85; BGE 2-1999, f. & cert. ef. 11-8-99; BGE 2-2002, f. & cert. ef. 4-15-02; BGE 9-2004, f. & cert. ef. 10-19-04

Adm. Order No.: BGE 10-2004

Filed with Sec. of State: 10-19-2004

Certified to be Effective: 10-19-04

Notice Publication Date: 9-1-04

Rules Adopted: 809-050-0050

Subject: This rule addition mandates that all applicants for examination and renewal of registration must provide their Social Security Number (SSN). Both federal and state child support agencies have statutory authority to access registrant information of state licensing boards. Both state and federal child support agencies locate individuals by their SSN. In addition, the Oregon Department of Revenue has statutory authority to obtain SSNs from licensing boards for tax enforcement purposes.

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

809-050-0050

Required Application Information

(1) The Board will not issue or renew any registration or specialty certification unless an applicant provides his or her Social Security Number on the application or renewal form. The applicant need not provide the Social Security Number on the application for renewal if the applicant's Social Security Number previously has been provided to the agency and is in the record.

(2) If an applicant has not been issued a Social Security Number by the United States Social Security Administration, the Board will accept a written statement from the applicant to fulfill the requirements of OAR 809-050-0040(1). The applicant may, but is not required to, submit the written statement on a form provided by the Board. Any written statement submitted must:

(a) Be signed by the applicant;

(b) Attest to the fact that no Social Security Number has been issued to the applicant by the United States Social Security Administration;

(c) Assert that the information provided about the Social Security Number is true and correct; and

(d) Acknowledge that knowingly supplying false information under this section is a crime.

(3) Applicants must provide Social Security Numbers as required by ORS 25.785, 305.385, and 42 USC § 666(a)(13) for child support enforcement purposes and Department of Revenue purposes. Failure to provide the appropriate Social Security Number or written statement attesting to the lack of an appropriate Social Security Number will be a basis for refusal to

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register or renew an applicant. The Board will maintain a record of the filed Social Security Number.

Stat. Auth.: ORS 670.310 & 670.304
Stats. Implemented: ORS 25.785, 305.385 & 42 USC § 666(a)(13)
Hist.: BGE 10-2004, f. & cert.ef. 10-19-04

Board of Massage Therapists
Chapter 334

Adm. Order No.: BMT 3-2004(Temp)

Filed with Sec. of State: 10-22-2004

Certified to be Effective: 10-22-04 thru 4-19-05

Notice Publication Date:

Rules Amended: 334-010-0050

Subject: To delete the requirement of continuing education providers having to be approved by the Board of Massage Therapists.

To delete the words "Board approved" and to change how many credits earned for volunteering at an organized event.

Rules Coordinator: Michelle Sherman—(503) 365-8657

334-010-0050

Continuing Education

(1) At the biennial renewal time, each licensee shall sign a statement and provide proof that they have completed 25 hours of continuing education.

(2) All continuing education must be completed within the 24 months preceding the date renewal is due. Hours in excess of the total number required may not be carried over for credit toward future renewals.

(3) The continuing education requirement shall not apply to a massage therapist's first license renewal, but will apply every biennium thereafter.

(4) Each licensee must provide records of all continuing education hours at the time of renewal in the manner prescribed below:

- (a) Official abstract of research conducted;
- (b) Copy of official certificate or letter of attendance at seminars, workshops, institutes, classes;
- (c) Official transcripts from a university, college, or technical school demonstrating successful completion of a course;
- (d) Official letter from a designated agent of a Board or national or state agency or organization verifying participation as a Board member, test item writer, or examiner;
- (e) Official letter from designated agent of agency for whom students are precepted or supervised with information stating number of students and dates of supervision or precepting;
- (f) Type, name and dates of production of media materials;
- (g) Dates and hours of mentoring contact;
- (h) Names, author(s), and date of publication of reading material used for self study;

(i) Name, producer, date of telecommunication conferences or videotaped presentations;

- (j) Certificate of completion from agency or program providing self-study credits;
- (k) Name, topic, date and hours of presentation for classes, workshops, seminars, institutes taught by licensee.

(5) Continuing education records shall be maintained by each licensee for no less than three years.

(6) Falsification of continuing education records will result in disciplinary action.

(7) Failure to complete continuing education hours by the time of renewal will result in non-issuance of a license.

(8) If the Board determines that the licensee does not meet continuing education requirements, licensee has thirty days from date of notification of non-compliance to come into compliance. Failure to be in compliance within thirty days shall result in suspension of license to practice massage.

(9) If the Board finds indications of fraud, investigative action shall be instituted. Findings of fraud may result in loss of license.

(10) Topic Areas: Continuing education must be in areas related to the practice of massage or bodywork including theory, research, technique or practice. Topic areas may include, but are not limited to:

- (a) Sciences related to massage or bodywork;
- (b) Movement modalities related to massage or bodywork;
- (c) Psychosocial sciences;
- (d) Somatics;
- (e) Medicinal substances (allopathic, herbal, homeopathic, naturopathic);

- (f) Devices related to massage or bodywork practice;
- (g) Communication principles & techniques including group, interpersonal, and documentary;
- (h) Ethics;
- (i) Health care contexts related to massage or bodywork such as business practices, insurance, standards, politics;
- (j) Specialized forms or modalities of massage and bodywork;
- (k) Communicable disease principles and prevention;
- (l) Sanitation practices related to massage or bodywork practice;
- (m) Regulatory and legal requirements related to massage or bodywork;
- (n) Theories of massage & bodywork paradigms, principles & practice; and
- (o) Interventions and techniques;

(11) Categories. The required 25 hours of continuing education per biennium shall be selected from one of the following categories however, 12 of the continuing education hours must be in activities that involve attendance at organized events involving other massage and bodywork practitioners unless otherwise specified in the rules. The Board accepts any CE class that is approved by a national credentialing program and any class presented by a school that has Oregon Department of Education approval.

(a) Attendance at an accredited university, college or technical course — may claim 3 hours per credit hour earned;

(b) Attendance at seminars, workshops, or institutes — may claim 1 hour per direct hour of contact up to a total of 25 hours for the biennium;

(c) Attendance at telecommunication presentations of educational courses, seminars, workshops — may claim 1 hour per direct hour up to a total of 12 hours for the biennium;

(d) Completion of a self-study course — may claim one hour of credit per unit.

(e) Attendance at educational sessions at state and national conferences related to massage or bodywork — may claim 1 hour per hour of attendance (up to 25 hours);

(f) Professional presentation (as presenter) for a class, seminar, or workshop — may claim two hours of credit for every hour of actual presentation up to 25 hours of credit. No additional hours may be claimed for subsequent presentation.

(g) Author or co-author of a publication related to massage or bodywork may claim 25 hours of credit one time only per publication.

(h) Research related to massage or bodywork as a principal investigator or co-investigator or as an associate investigator in an established research project — may claim:

- (A) 25 hours of credit if principal or co-investigator;
- (B) 12 hours of credit if associate investigator;

(i) Participation as an item writer for a state or national licensing or certifying examination — may claim up to 12 hours of credit;

(j) Supervision of massage or mentoring of massage or bodywork students in a formal program of study—may claim 2 hours of credit for each student supervised during the course up to a total of 12 hours of credit

(k) Participation as an examiner for a state or national practical examination for licensure or certification — may claim 6 hours of credit for every year up to 12 hours of credit for the biennium;

(l) Serving as a Board member on a state licensing board for massage or bodywork or on a state or national professional organization for massage or bodywork — may claim 6 hours of credit for every year served up to a total of 12 hours of credit for the biennium.

(m) Serving as a Committee member for the Oregon Board — may claim 6 hours of credit for every year served up to a total of 12 hours of credit for the biennium;

(n) Volunteer work at an organized event — may claim 4 hours of credit for the biennium; and,

(o) Attendance at a CPR class — may claim 4 hours of CE per biennium.

Stat Auth: ORS 687.081, 687.121 & 687.122

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: BMT 1-1998(Temp), f. & cert. ef. 2-3-98 thru 7-31-98; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 2-2004(Temp), f. & cert. ef. 3-16-04 thru 9-7-04; Administrative Correction 9-28-04; BMT 3-2004(Temp), f. & cert. ef. 10-22-04 thru 4-19-05

Adm. Order No.: BMT 4-2004
Filed with Sec. of State: 10-22-2004
Certified to be Effective: 1-1-05
Notice Publication Date: 7-1-04
Rules Amended: 334-010-0033

ADMINISTRATIVE RULES

Subject: Increase fee structure to accommodate expense demands.
Rules Coordinator: Michelle Sherman—(503) 365-8657

334-010-0033

Fees

Licensure fees will not be refunded.

(1) The fee for a massage therapist license and renewal license is — \$100.

(2) The fee for inactive license is — \$50.

(3) The fee for the practical examination and retake is — \$150.

(4) Application fee — \$50.

(5) Examination fee will be refunded only when the applicant is unqualified by Oregon statutes and no inquiry or investigation is initiated.

(6) A \$25 fee will be charged per week, to a maximum of \$250, for any late license renewal.

(7) The temporary license fee is — \$25.

(8) The fee for mailing list is — \$100.

(9) The fee for license reprint is — \$5.

(10) The fee for license verification is — \$5.

Stat. Auth.: ORS 183, ORS 687.121 & SB 1127

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1989(Temp), f. & cert. ef. 7-27-89; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 4-2004, f. 10-22-04, cert. ef. 1-1-05

Board of Medical Examiners Chapter 847

Adm. Order No.: BME 18-2004

Filed with Sec. of State: 10-20-2004

Certified to be Effective: 10-20-04

Notice Publication Date: 8-1-04

Rules Amended: 847-012-0000

Subject: The adopted 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—(503) 229-5873, ext. 223

847-012-0000

Patient's Access to Physician Medical Records

(1) Licensees of the Board of Medical Examiners shall make protected health information in the medical record available to the patient or the patient's authorized representative upon the patient's request, to inspect and obtain a copy of protected health information about the individual, except as provided by law and this rule. The patient may request all or part of the record. A summary may substitute for the actual record only if the patient agrees to the substitution. Board licensees are encouraged to use the written authorization form provided by ORS 192.522.

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

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

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

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

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

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

(b) Psychotherapy notes.

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

(d) Other reasons specified by federal regulation.

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

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

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

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

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

(5) Requests for medical records shall be complied with within a reasonable amount of time not to exceed thirty (30) days from the receipt of the request.

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

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 192.518, 192.519

Hist.: ME 7-1988, f. & cert. ef. 4-20-88; BME 1-2004, f. & cert. ef. 1-27-04; BME 18-2004, f. & cert. ef. 10-20-04

Adm. Order No.: BME 19-2004

Filed with Sec. of State: 10-20-2004

Certified to be Effective: 10-20-04

Notice Publication Date: 8-1-04

Rules Amended: 847-070-0033

Subject: The adopted 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—(503) 229-5873, ext. 223

847-070-0033

Visiting Acupuncturist Requirements

(1) The Board of Medical Examiners may grant approval for a visiting acupuncturist to demonstrate acupuncture needling as part of a seminar, conference, or workshop sponsored by an Oregon school or an Oregon school's program of acupuncture or oriental medicine, or professional organization of acupuncture, or any seminar, conference, or workshop approved by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) to provide continuing education training for a period up to ten days no more than three times a year. The visiting acupuncturist who requests additional time beyond the ten days, or submits more than three requests in a year, must apply for and obtain a license to practice in the state of Oregon. An Oregon licensed acupuncturist must be in attendance at the seminar, conference or workshop.

(2) Prior to being granted approval, the following information must be submitted to the Board of Medical Examiners:

(a) A letter from the school or program of acupuncture or oriental medicine, or organization which will have an out-of-state acupuncturist demonstrate needling as part of a seminar, conference, or workshop with the following information:

(A) Dates of the seminar, conference, or workshop in which the visiting acupuncturist will be demonstrating acupuncture needling;

(B) Description of the seminar, conference or workshop;

(C) Name of the responsible Oregon acupuncturist, licensed under ORS 677, actively registered and in good standing with the Board, who will be in attendance and responsible for the conduct of the visiting acupuncturist at the seminar, conference or workshop.

(D) A curriculum vitae for the visiting acupuncturist; and

(b) If the visiting acupuncturist is licensed, certified or registered to practice as an acupuncturist in the state in which the acupuncturist is practicing, the visiting acupuncturist must provide documentation that their license, certificate, or registration is active and in good standing.

(3) The request for approval to practice in the state of Oregon as a visiting acupuncturist must be received at least two weeks prior to the beginning date of such practice.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265(1) & (2)

Hist.: BME 9-2004, f. & cert. ef. 4-22-04; BME 19-2004, f. & cert. ef. 10-20-04

Adm. Order No.: BME 20-2004

Filed with Sec. of State: 10-20-2004

Certified to be Effective: 10-20-04

Notice Publication Date: 8-1-04

Rules Amended: 847-080-0017

Subject: The adopted administrative rules require an applicant to request an official grade certification of the National Board of Podiatric Medical Examiners' (NBPME) Examination Part III be sub-

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mitted directly to the Board from the Federation of Podiatric Medical Boards.

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

847-080-0017

Letters and Official Grade Certifications to Be Submitted for Licensure

The applicant must request official letters directly from:

(1) The Dean of the School of Podiatry: This letter is required in addition to the certification on the application form. A copy of the Dean's Letter of Recommendation which shall include a statement concerning the applicant's moral and ethical character and overall performance as a podiatric student.

(2) The Director of Podiatric Education, Chairman or other official of the residency hospital in U.S. and foreign countries: A currently dated original letter (a copy is not acceptable), sent directly from the hospitals in which any post-graduate training was served, which shall include an evaluation of overall performance and specific beginning and ending dates of training.

(3) The Director or other official for practice and employment in hospitals, clinics, etc. in the U.S. and foreign countries: A currently dated original letter (a copy is not acceptable), sent directly from the hospital/clinic which shall include an evaluation of overall performance and specific beginning and ending dates of practice and employment.

(4) The Executive Secretary of all State Boards in the United States where the applicant has ever been licensed; regardless of status, i.e., current, lapsed, never practiced there: The currently dated original letter (a copy is not acceptable), sent directly from the boards, shall show license number, date issued and status.

(5) Official National Board Certification: An official grade certification of the National Board of Podiatric Medical Examiners (NBPME) examination Part I and II is required directly from the National Board of Podiatry Examiners. An official grade certification of the NBPME examination Part III is required directly from the Federation of Podiatric Medical Boards.

Stat. Auth.: ORS 183 & 677

Stats. Implemented: ORS 677.825

Hist.: ME 4-1982, f. & ef. 4-23-82; ME 6-1986, f. & ef. 4-23-86; ME 17-1987, f. & ef. 8-3-87; BME 20-2004, f. & cert. ef. 10-20-04

Adm. Order No.: BME 21-2004(Temp)

Filed with Sec. of State: 11-15-2004

Certified to be Effective: 11-15-04 thru 4-15-05

Notice Publication Date:

Rules Amended: 847-035-0030

Rules Suspended: 847-035-0030(T)

Subject: The adopted rules allows EMT-Basics, in the event of a release of chemical agents, to administer atropine sulfate and pralidoxime chloride from a pre-loaded auto-injector device if they are given a direct order by their supervising physician, or they are under the direction of an EMT-Paramedic who is on the scene.

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

847-035-0030

Scope of Practice

(1) The Board of Medical Examiners has established a scope of practice for emergency and nonemergency care for First Responders and EMTs. First Responders and EMTs may provide emergency and nonemergency care in the course of providing prehospital care as an incident of the operation of ambulance and as incidents of other public or private safety duties, but is not limited to "emergency care" as defined in OAR 847-035-0001(5).

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

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

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

(5) No EMT may function without assigned standing orders issued by Board-approved supervising physician.

(6) An Oregon-certified First Responder or EMT, acting through standing orders, shall respect the patient's wishes including life-sustaining treatments. Physician supervised First Responders and EMTs shall request

and honor life-sustaining treatment orders executed by a physician or a nurse practitioner, if available. A patient with life-sustaining treatment orders always requires respect, comfort and hygienic care.

(7) The scope of practice for emergency and nonemergency care established by the Board for First Responders is intended as authorization for performance of procedures by First Responders without direction from a Board-approved supervising physician, except as limited by subsection (2) of this rule. A First Responder may perform the following emergency care procedures without having signed standing orders from a supervising physician:

(a) Conduct primary and secondary patient examinations;

(b) Take and record vital signs;

(c) Utilize noninvasive diagnostic devices in accordance with manufacturer's recommendation;

(d) Open and maintain an airway by positioning the patient's head;

(e) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;

(f) Provide care for soft tissue injuries;

(g) Provide care for suspected fractures;

(h) Assist with prehospital childbirth; and

(i) Complete a clear and accurate prehospital emergency care report form on all patient contacts and provide a copy of that report to the senior EMT with the transporting ambulance.

(8) A First Responder may perform the following procedures only when the First Responder is providing emergency care as part of an agency which has a Board-approved supervising physician who has issued written standing orders to that First Responder authorizing the following:

(a) Administration of medical oxygen;

(b) Open and maintain an airway through the use of an oropharyngeal and nasopharyngeal airway and pharyngeal suctioning devices;

(c) Operate a bag mask ventilation device with reservoir;

(d) Provision of care for suspected medical emergencies, including administering liquid oral glucose for hypoglycemia; and

(e) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator, only when the First Responder:

(A) Has successfully completed a Section-approved course of instruction in the use of the automatic or semi-automatic defibrillator; and

(B) Complies with the periodic requalification requirements for automatic or semi-automatic defibrillator as established by the Section.

(9) An Oregon-certified EMT-Basic may perform emergency and nonemergency procedures. Emergency care procedures shall be limited to the following basic life support procedures:

(a) Perform all procedures that an Oregon-certified First Responder can perform;

(b) Ventilate with a non-invasive positive pressure delivery device;

(c) Insert a dual lumen airway device in the practice of airway maintenance;

(d) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;

(e) Provide care for suspected shock, including the use of the pneumatic anti-shock garment;

(f) Provide care for suspected medical emergencies, including:

(A) Obtaining a peripheral blood specimen for blood glucose monitoring, obtained via fingerstick, heelstick, or earlobe puncture;

(B) Administer epinephrine by subcutaneous or automatic injection device for anaphylactic shock;

(C) Administer activated charcoal for poisonings, following local written standing orders; and

(D) Administer aspirin for suspected myocardial infarction.

(g) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator;

(h) Transport stable patients with saline locks, heparin locks, foley catheters, or in-dwelling vascular devices;

(i) Perform other emergency tasks as requested if under the direct visual supervision of a physician and then only under the order of that physician;

(j) Complete a clear and accurate prehospital emergency care report form on all patient contacts;

(k) Assist a patient with administration of sublingual nitroglycerine tablets or spray and with metered dose inhalers that have been previously prescribed by that patient's personal physician and that are in the possession of the patient at the time the EMT-Basic is summoned to assist that patient; and

(l) In the event of a release of military chemical warfare agents from the Umatilla Army Depot, the EMT-Basic who is a member or employee of

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an EMS agency serving the DOD-designated Immediate Response Zone who has completed a Section-approved training program may administer atropine sulfate and pralidoxime chloride from a Section-approved pre-loaded auto-injector device, and perform endotracheal or pharyngoesophageal intubation, using protocols promulgated by the Section and adopted by the supervising physician. 100% of EMT-Basic actions taken pursuant to this section shall be reported to the Section via a copy of the prehospital emergency care report and shall be reviewed for appropriateness by Section staff and the Subcommittee on EMT Certification, Education and Discipline.

(m) In the event of a release of chemical agents the EMT-Basic, who has completed Section-approved training, may administer atropine sulfate and pralidoxime chloride, using protocols approved by the Section and adopted by the supervising physician, if:

(A) The supervising physician provides the EMT-Basic with a direct, verbal order through radio or telephone contact, or

(B) The EMT-Basic is under the direction of an EMT-Paramedic who is on the scene.

(10) An Oregon-certified EMT-Intermediate may perform emergency and nonemergency care procedures. The emergency care procedures shall be limited to the following:

(a) Perform all procedures that an Oregon-certified EMT-Basic can perform;

(b) Initiate and maintain peripheral intravenous (I.V.) lines;

(c) Initiate and maintain an intraosseous infusion;

(d) Initiate saline or similar locks when specifically authorized by the physician;

(e) Infuse any physiologic isotonic crystalloid solution;

(f) Draw peripheral blood specimens;

(g) Initiate or administer the following medications:

(A) Epinephrine 1:10,000;

(B) Atropine sulfate;

(C) Lidocaine bolus for ventricular fibrillation, post ventricular fibrillation/ventricular tachycardia cardiac arrest, ventricular tachycardia, or wide complex tachycardia;

(D) Naxolone hydrochloride;

(E) Hypertonic glucose;

(F) Nitroglycerine for chest pain;

(G) Beta-2-specific nebulized bronchodilators;

(H) Morphine for pain management;

(h) Insert a dual lumen airway or laryngeal mask airway (LMA) device in the practice of airway maintenance;

(i) Insert an orogastric tube;

(j) Maintain during transport any intravenous medication infusions or other procedures which were initiated in a medical facility, and if clear and understandable written and verbal instructions for

such maintenance have been provided by the personnel at the sending medical facility.

(k) Perform cardiac defibrillation with a manual defibrillator if the EMT-Intermediate has satisfactorily completed a Section-approved training course in manual defibrillation, including written and practical examinations and the EMT-Intermediate is, at the time of performing manual defibrillation, in the service of an agency which has been granted an "EMT-Intermediate Manual Defibrillation Waiver" by the Section.

(11) An Oregon-certified EMT-Paramedic may perform emergency and nonemergency care procedures. The emergency care procedures shall be limited to:

(a) Perform all procedures that an Oregon-certified EMT-Intermediate can perform;

(b) Initiate the following airway management techniques:

(A) Endotracheal intubation;

(B) Tracheal suctioning techniques;

(C) Needle cricothyrotomy; and

(D) Transtracheal jet insufflation which may be used when no other mechanism is available for establishing an airway.

(c) Initiate a nasogastric tube;

(d) Initiate electrocardiographic monitoring and interpret presenting rhythm;

(e) Provide advanced life support in the resuscitation of patients in cardiac arrest;

(f) Perform emergency cardioversion in the compromised patient;

(g) Attempt external transcutaneous pacing of bradycardia that is causing hemodynamic compromise;

(h) Initiate needle thoracentesis for tension pneumothorax in a pre-hospital setting;

(i) Initiate placement of a femoral intravenous line when a peripheral line cannot be placed;

(j) Initiate placement of a urinary catheter for trauma patients in a pre-hospital setting who have received diuretics and where the transport time is greater than thirty minutes; and

(k) Initiate or administer any medications or blood products under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician.

(12) The Board has delegated to the Section the following responsibilities for ensuring that these rules are adhered to:

(a) Designing the supervising physician and agent application;

(b) Approving a supervising physician or agent; and

(c) Investigating and disciplining any EMT or First Responder who violates their scope of practice.

(d) The Section shall provide copies of any supervising physician or agent applications and any

EMT or First Responder disciplinary action reports to the Board upon their request.

(13) The Section shall immediately notify the Board when questions arise regarding the qualifications or responsibilities of the supervising physician or agent of the supervising physician.

Stat. Auth.: ORS 682.245

Stats. Implemented: ORS 682.245

Hist.: ME 2-1983, f. & ef. 7-21-83; ME 3-1984, f. & ef. 1-20-84; ME 12-1984, f. & ef. 8-2-84; ME 7-1985, f. & ef. 8-5-85; ME 12-1987, f. & ef. 4-28-87; ME 27-1987(Temp), f. & ef. 11-5-87; ME 5-1988, f. & cert. ef. 1-29-88; ME 12-1988, f. & cert. ef. 8-5-88; ME 15-1988, f. & cert. ef. 10-20-88; ME 2-1989, f. & cert. ef. 1-25-89; ME 15-1989, f. & cert. ef. 9-5-89, & corrected 9-22-89; ME 6-1991, f. & cert. ef. 7-24-91; ME 10-1993, f. & cert. ef. 7-27-93; ME 3-1995, f. & cert. ef. 2-1-95; ME 1-1996, f. & cert. ef. 2-15-96; ME 3-1996, f. & cert. ef. 7-25-96; BME 6-1998, f. & cert. ef. 4-27-98; BME 13-1998(Temp), f. & cert. ef. 8-6-98 thru 2-2-99; BME 14-1998, f. & cert. ef. 10-26-98; BME 16-1998, f. & cert. ef. 11-24-98; BME 13-1999, f. & cert. ef. 7-23-99; BME 14-2000, f. & cert. ef. 10-30-00; BME 11-2001, f. & cert. ef. 10-30-01; BME 9-2002, f. & cert. ef. 7-17-02; BME 10-2002, f. & cert. ef. 7-22-02; BME 1-2003, f. & cert. ef. 1-27-03; BME 12-2003, f. & cert. ef. 7-15-03; BME 4-2004, f. & cert. ef. 1-27-04; BME 11-2004(Temp), f. & cert. ef. 4-22-04 thru 10-15-04; BME 12-2004(Temp), f. & cert. ef. 6-11-04 thru 12-8-04; BME 21-2004(Temp), f. & cert. ef. 11-15-04 thru 4-15-05

Board of Nursing Chapter 851

Adm. Order No.: BN 13-2004

Filed with Sec. of State: 10-26-2004

Certified to be Effective: 10-26-04

Notice Publication Date: 8-1-04

Rules Amended: 851-001-0005

Subject: This proposed amendment is simply housekeeping in nature in that it updates the administrative rule to be congruent with the latest version of the Model Rules of Procedure of the Attorney General dated January 15, 2004.

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

851-001-0005

Model Rules of Procedure

(1) The Model Rules of Procedure of the Attorney General under the Administrative Procedures Act in effect on January 15, 2004, and all amendments thereto are hereby adopted by reference as the rules of the State Board of Nursing. These rules shall be controlling except as otherwise required by statute or rule.

(2) Nothing in these rules shall be deemed to deny a person, an applicant, licensee or certified nursing assistant an opportunity to request an appearance before the Board or its Executive Director or designated Board staff for an informal conference to discuss any matter administered by the Board. The Board shall notify the person, applicant, licensee or certified nursing assistant of the time and place of the informal conference. The Board or its Executive Director or designated Board staff may also schedule an informal conference and notify the person.

(3) A request for an appearance before the Board to discuss an issue with the Board or a request to have an item placed on the Board's meeting agenda shall be made at least six weeks prior to the Board meeting. The request shall include all supporting documents the requestor wishes the Board to review. Items shall be placed on the Board's agenda as time is available, at the discretion of the Board President.

(4) Designated Board staff may require that an investigative interview be tape-recorded. To make this decision, the following factors will be considered:

(a) The seriousness of the complaint;

ADMINISTRATIVE RULES

9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-060-0300; BN 10-1999, f. & cert. ef. 12-1-99; BN 14-2004, f. & cert. ef. 10-26-04

- (b) The licensee or applicant's previous cooperation with the Board;
- (c) The risk of harm to the public;
- (d) Whether licensee or applicant is represented by an attorney;
- (e) The availability of a second staff member to record the interview in writing;

(f) The likelihood that the case will result in a contested case hearing.

(5) An order requiring discovery will be limited to a list of witnesses to be called by the parties in their case in chief and the documents that the parties intend to introduce as exhibits at the contested case hearing during the presentation of their case in chief.

(6) Contested case hearings are closed to members of the public who are not parties or representatives of the parties in the proceedings.

[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 Nursing.]

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 183.341 & 678.150

Hist.: Renumbered from 851-040-0005, 4-1-76; NER 17, f. 6 16-72, ef. 7-1-72; NER 18, f. 3-18-74, ef. 4-11-74; NER 31, f. & ef. 3-30-76; NER 20-1980, f. & ef. 6-24-80; NER 1-1982, f. & ef. 1-29-82; NER 2-1983, f. & ef. 10-4-83; NER 3-1986, f. & ef. 6-6-86; NB 3-1988, f. & cert. ef. 7-5-88; NB 11-1990, f. & cert. ef. 11-6-90; BN 4, f. & cert. ef. 4-24-00; BN 10-2002, f. & cert. ef. 4-25-02; BN 9-2004, f. & cert. ef. 5-4-04; BN 13-2004, f. & cert. ef. 10-26-04

Adm. Order No.: BN 14-2004

Filed with Sec. of State: 10-26-2004

Certified to be Effective: 10-26-04

Notice Publication Date: 8-1-04

Rules Amended: 851-002-0040, 851-002-0050

Subject: These rules cover the Nursing Assistant Schedule of Fees. These amendments establish a registration fee for a new level of certified nursing assistants. In addition, a housekeeping correction was made.

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

851-002-0040

Nursing Assistant Schedule of Fees

- (1) Certification by Examination — \$106.
- (2) Certification by Endorsement — \$40.
- (3) Reexamination — Manual Skills — \$45.
- (4) Reexamination — Written — \$25.
- (5) Oral Administration of Written Examination — \$35.
- (6) Written Verification of Certification — \$10.
- (7) Duplicate Certificate — \$10.
- (8) CNA Certificate Renewal — \$40.
- (9) CNA Reactivation Fee — \$5.
- (10) CNA Certification for RN or LPN — \$40.
- (11) CNA Certification for Student Nurses — \$40.
- (12) Initial Approval CNA Training Program — \$100.
- (13) Approval of Revised CNA Training Program — \$75.
- (14) Reapproval of CNA Training Program — \$50.
- (15) CNA Primary Instructor Approval — \$10.
- (16) Initial Approval of CNA Program Director — \$25.
- (17) CNA 2 Registration (each category) — \$5.

Stat. Auth.: ORS 678.150, 678.410

Stats. Implemented: ORS 678.410

Hist.: NB 9-1989(Temp), f. & cert. ef. 11-24-89; NB 5-1990, f. & cert. ef. 5-7-90; NB 7-1990(Temp), f. & cert. ef. 7-11-90; NB 9-1990, f. & cert. ef. 10-9-90; NB 5-1991(Temp), f. & cert. ef. 10-15-91; NB 3-1992, f. & cert. ef. 2-13-92; NB 12-1992, f. 12-15-92, cert. ef. 1-1-93; NB 2-1993, f. 2-8-93, cert. ef. 2-16-93; NB 15-1993, f. 12-27-93, cert. ef. 6-1-94; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-060-0300; BN 7-1999, f. 8-10-99, cert. ef. 11-1-99; BN 10-1999, f. & cert. ef. 12-1-99; BN 6-2003, f. & cert. ef. 7-7-03; BN 7-2004, f. & cert. ef. 2-26-04; BN 14-2004, f. & cert. ef. 10-26-04

851-002-0050

CMA Schedule of Fees

- (1) Medication Administration Certification by Examination \$73
- (2) CMA Certification for RN or LPN — \$20.
- (3) CMA Certificate Renewal — \$15.
- (4) CMA Primary Instructor Approval — \$10.
- (5) Initial Approval of CMA Program Director — \$25.
- (6) Initial Approval of CMA Training Program — \$100.
- (7) Approval of Revised CMA Training Program — \$75.
- (8) Reapproval of CMA Training Program — \$50.

Stat. Auth.: ORS 678.150, 678.410

Stats. Implemented: ORS 678.410

Hist.: NB 9-1989(Temp), f. & cert. ef. 11-24-89; NB 5-1990, f. & cert. ef. 5-7-90; NB 7-1990(Temp), f. & cert. ef. 7-11-90; NB 9-1990, f. & cert. ef. 10-9-90; NB 5-1991(Temp), f. & cert. ef. 10-15-91; NB 3-1992, f. & cert. ef. 2-13-92; NB 12-1992, f. 12-15-92, cert. ef. 1-1-93; NB 2-1993, f. 2-8-93, cert. ef. 2-16-93; NB 15-1993, f. 12-27-93, cert. ef. 6-1-94; NB

Adm. Order No.: BN 15-2004

Filed with Sec. of State: 10-26-2004

Certified to be Effective: 10-26-04

Notice Publication Date: 8-1-04

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 June, July and August 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 August 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 August 2004:

(a) Nutrients and Nutritional Agents — all drugs;

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

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

(A) I 131;

(B) Gallium Nitrate; and

(C) Mifepristone (Mifeprex); and

(D) Abarelix (Plenaxis).

(d) Cardiovasculars — all drugs except:

(A) Cardioplegic Solution;

(B) Fenoldopam Mesylate (Corlopam);

(C) Dofetilide (Tikosyn); and

(D) Bosentan (Tracleer).

(e) Renal and Genitourinary Agents — all drugs;

(f) Respiratory Agents — all drugs;

(g) Central Nervous System Agents:

(A) Class II Controlled Substances — Only the following drugs:

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Board of Parole and Post-Prison Supervision Chapter 255

- (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; NB 2-2001, f. & cert. ef. 2-21-01; NB 6-2001, f. & cert. ef. 4-24-01; NB 9-2001, f. & cert. ef. 7-9-01; NB 13-2001, f. & cert. ef. 10-16-01; NB 4-2002, f. & cert. ef. 3-5-02; NB 11-2002, f. & cert. ef. 4-25-02; NB 14-2002, f. & cert. ef. 7-17-02; NB 19-2002, f. & cert. ef. 10-18-02; NB 21-2002, f. & cert. ef. 12-17-02; NB 2-2003, f. & cert. ef. 3-6-03; NB 4-2003, f. & cert. ef. 4-23-03; NB 8-2003, f. & cert. ef. 7-7-03; NB 10-2003, f. & cert. ef. 10-2-03; NB 13-2003, f. & cert. ef. 12-9-03; NB 6-2004, f. & cert. ef. 2-26-04; NB 10-2004, f. & cert. ef. 5-4-04; NB 12-2004, f. & cert. ef. 7-13-04; NB 15-2004, f. & cert. ef. 10-26-04

Adm. Order No.: PAR 10-2004
Filed with Sec. of State: 11-2-2004
Certified to be Effective: 11-2-04
Notice Publication Date: 10-1-04
Rules Adopted: 255-030-0026
Rules Amended: 255-030-0025

Subject: Amendments to the Board's rules are necessary to ensure that the Board's and the Department of Corrections policies and procedures governing who may accompany an inmate at a hearing before the Board are promulgated jointly as required by ORS 144.123.

Rules Coordinator: Michael R. Washington—(503) 945-9009

255-030-0025

Inmate Accompaniment to Board of Parole and Post-Prison Supervision Hearing

(1) Purpose: The purpose of these rules is to jointly establish with the Department of Corrections policies and procedures governing who may accompany an inmate in a hearing before the Board of Parole and Post-Prison Supervision.

(2) Policy: It is the joint policy of the Department of Corrections and Board of Parole and Post-Prison Supervision that inmates be permitted to have a person accompany them in hearings before the Board in accordance with ORS 144.123, as provided in these rules. The decision to approve a person's access to a Board hearing held within a Department of Corrections facility will be made by the functional unit manager or designee of the facility in which the inmate is confined, in accordance with the department's rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127). A person's access to a Department of Corrections facility may be prohibited or restricted by the functional unit manager or designee consistent with these rules; the health, safety and security of staff, inmates, and the public; and with the safe, secure, and orderly operation and management of the facility.

Stat. Auth.: ORS 144.123 & 144.120(7)

Stats. Implemented: ORS 144.120(7), ORS 144.123 & ORS 192.630

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 10-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 2-1990, f. & cert. ef. 4-5-90; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00; PAR 4-2004(Temp), f. & cert. ef. 5-14-04 thru 11-10-04; PAR 10-2004, f. & cert. ef. 11-2-04

255-030-0026

Who May Appear at a Board of Parole and Post-Prison Supervision Hearing

(1) Inmate Accompaniment: When appearing before the Board of Parole and Supervision in a hearing, an inmate may be accompanied at the Department of Corrections facility in which the inmate is confined, subject to the prior approval of the facility functional unit manager or designee, by:

(a) A person who has been approved for privileged visiting in accordance with the Department of Corrections rule on Visiting (Inmate) (OAR 291-127);

(b) An assigned inmate legal assistant, selected in accordance with the Department of Corrections rule on Legal Affairs (Inmate) (OAR 291-139), from the Department of Corrections facility where the inmate is confined; or

(c) The inmate's attorney.

(2) In addition to those persons specified in subsection (1) of this rule, the inmate may be accompanied at the hearing via telephone or videoconference by such other person as the Board of Parole and Post-Prison Supervision, in its discretion, may approve by prior arrangement.

(3) The Department of Corrections, if requested by the inmate or the Board, will assign an assigned inmate legal assistant from the Department of Corrections facility where the inmate is confined to accompany an inmate at a Board hearing.

(4) Others Who May Attend/Appear at a Board Hearing:

(a) Victim and District Attorney: The victim, personally, or by counsel or other representative, and the District Attorney from the committing jurisdiction or his/her representative, may attend/appear Board of Parole and Post-Prison Supervision Hearings.

(b) Public: Members of public may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings.

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(c) Media Representatives: Approved media representatives may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings.

(d) Department of Corrections Employees, Volunteers, and Contractors: Department of Corrections employees, volunteers, and contractors may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings, except as requested by the Board in order to provide testimony in the hearing.

(5) Means and Manner of Appearance/Attendance:

(a) Board Hearings Conducted With Inmate in Person Within a Department of Corrections Facility:

(A) If the inmate will appear before the Board of Parole and Post-Prison Supervision in person within a Department of Corrections facility, the person(s) accompanying the inmate, the victim and the District Attorney, and/or their representatives, members of the public, and approved media representatives, may appear/attend the hearing in person at the Department of Corrections facility, subject to the approval by the functional unit manager of the facility in which the hearing is being conducted, or via telephone or videoconference as arranged in advance with the Board.

(B) A person desiring to appear/attend a Board of Parole and Post-Prison Supervision hearing in a Department of Corrections facility must contact the functional unit manager or designee of the Department of Corrections facility in which the hearing is scheduled to take place in advance of the hearing to arrange for their attendance/appearance.

(C) A person's access to a Department of Corrections facilities is subject to the Department of Corrections rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127), and may be prohibited or restricted by the functional unit manager or designee of the facility in which the hearing is being conducted consistent with the health, safety and security of staff, inmates, and the public, and with the safe, secure, and orderly operation and management of the facility.

(D) A person who appears/attends a Board of Parole and Post-Prison Supervision hearing in a Department of Corrections facility is subject to the rules of conduct, and the terms and conditions of visiting set forth in the department's rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127).

(b) Board Hearings Conducted With Inmate Via Telephone or Videoconference: If the inmate will appear before the Board of Parole and Post-Prison Supervision via telephone or videoconference, the person(s) accompanying the inmate, the victim and the District Attorney, and/or their representatives, members of the public, and approved media representatives, may appear/attend the hearing at the place in which the Board is meeting for purposes of conducting the hearing, or via telephone or videoconference, as arranged in advance with the Board.

(6) Conduct of Hearing: The Board of Parole and Post-Prison Supervision may eject any disruptive person from a hearing. The Board may require all persons to leave the designated hearing area during deliberations.

Stat. Auth.: ORS 144.123 & 144.120(7)

Stats. Implemented: ORS 144.123 & 144.120(7)

Hist.: PAR 10-2004, f. & cert. ef. 11-2-04

Adm. Order No.: PAR 11-2004

Filed with Sec. of State: 11-2-2004

Certified to be Effective: 11-2-04

Notice Publication Date: 7-1-04

Rules Amended: 255-075-0079

Subject: The amendment of the proposed rule clarifies the board's authority to require offenders who were sentenced to life in prison or received a lifetime period of post-prison supervision for the crime of Murder to serve further incarceration to the sentence expiration date, regardless of the time the crime was committed. This amendment is necessary to bring the board's rules into conformity with OAR 213-005-0004.

Rules Coordinator: Michael R. Washington—(503) 945-9009

255-075-0079

Guidelines for Re-release

(1) For technical violation(s):

(a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation.

(b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90

days for each return, not to exceed the total revocation sanction days allowed in OAR 213-011-0004.

(2) For conduct constituting a crime:

(a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation.

(b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-11-004.

(3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.

(4) Offenders sentenced to life imprisonment or received a lifetime period of post-prison supervision for murder may serve further incarceration to the sentence expiration date. Offenders sentenced to life imprisonment for aggravated murder may serve further incarceration to the sentence expiration date.

(5) Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.

(6) Offenders sentenced as sexually violent dangerous offenders pursuant to HB 2327 (1999 Legislative Session) for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court.

(7)(a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.

(b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) shall be the sentencing date, if no further action is taken by the Board.

(c) If the jailer, hearing officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.

(8) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.

(9) Notwithstanding subsections 1-7 of this rule, the Board may choose to postpone re-release on parole pursuant to Divisions 50 and 60 of this chapter.

(10) Notwithstanding subsections 1-8 of this rule, the Board may choose to deny re-release on parole pursuant to OAR 255-075-0096.

(11) Administrative sanctions do not count toward the revocation sanction limits.

Stat. Auth.: ORS 144.107, 144.108, 144.120(4), 144.125, 144.232, 144.345, 144.346, 144.395 & 161.735

Stats. Implemented:

Hist.: PAR 1-1989(Temp), f. & cert. ef. 4-19-89; PAR 3-1989, f. 10-13-89, ef. 10-16-89; PAR 4-1989, f. & cert. ef. 11-1-89; PAR 6-1990(Temp), f. & cert. ef. 10-15-90; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 11-1997(Temp), f. & cert. ef. 11-14-97; PAR 1-1998, f. & cert. ef. 5-11-98; PAR 3-2000, f. & cert. ef. 1-25-00; PAR 2-2003, f. & cert. ef. 5-13-03; PAR 5-2004(Temp), f. & cert. ef. 6-14-04 thru 12-10-04; PAR 11-2004, f. & cert. ef. 11-2-04

Adm. Order No.: PAR 12-2004

Filed with Sec. of State: 11-2-2004

Certified to be Effective: 11-2-04

Notice Publication Date: 10-1-04

Rules Amended: 255-080-0005, 255-080-0011

Subject: The amendment of these rules is necessary to bring the rules into conformity with the Oregon Court of Appeals consolidated decision in the above entitled cases.

Rules Coordinator: Michael R. Washington—(503) 945-9009

255-080-0005

Procedure for Administrative Review

(1) An inmate/offender may request an administrative review by sending Exhibit O, Administrative Review Request Form, to the Board concisely explaining how his or her case fits the criteria for review listed in rule 255-080-0010.

(2) An inmate/offender must request administrative review within forty-five (45) days after the mailing date on the Board's final action on the reviewed issue. The Board will reject a request for administrative review as untimely unless:

(a) It is physically received by the Board on or before the 45th day after the mailing date on the Board's final action on the reviewed issue; or

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(b) It is delivered to the Board by mail in an envelope bearing a United States Postal Service (USPS) cancellation stamp dated on or before the 45th day after the mailing date on the Board's final action on the reviewed issue; or

(c) In the case of an inmate, and in the absence of a legible USPS cancellation stamp, the inmate signed and dated the request and deposited it in the institutional mailing system in compliance with all applicable Department of Corrections rules on or before the 45th day after the mailing date on the Board's final action on the reviewed issue.

(3) Regarding Orders of Supervision, an offender must request administrative review within forty-five (45) days after the date the offender signed the order or acknowledgement by the supervisory authority of the offender's receipt thereof. The Board will reject a request for administrative review of an order as untimely unless:

(a) It is physically received by the Board on or before the 45th day after the date the offender signed the order or acknowledgement by the supervisory authority of the offender's receipt thereof; or

(b) It is delivered to the Board by mail in an envelope bearing a United States Postal Service (USPS) cancellation stamp dated on or before the 45th day after the date the offender signed the order or acknowledgement by the supervisory authority of the offender's receipt thereof.

(4) If the Board or its designee determines that the request is consistent with the criteria as defined in rules 255-080-0010 and 255-080-0011, and meets the deadline requirements, the Board will resolve the matter using the procedures outlined in OAR 255-080-0012.

(5) When the Board or its designee denies review, the Board shall send the inmate/offender written notice of the specific reasons for denial.

(6) When review is denied, the prior decision is re-affirmed.

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

Stat. Auth.: ORS 144.335

Stats. Implemented: ORS 144.335

Hist.: 2PB 1979, f. & ef. 2-1-79; 2PB 11-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 17-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 8-1988, f. & ef. 7-1-88; PAR 18-1988, f. & ef. 12-6-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 2-1991, f. & cert. ef. 2-20-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 7-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 7-2000, f. & cert. ef. 6-9-00; PAR 8-2004, f. & cert. ef. 6-14-04; PAR 9-2004(Temp), f. & cert. ef. 9-3-04 thru 3-1-05; PAR 12-2004, f. & cert. ef. 11-2-04

255-080-0011

Limitations on Requests for Administrative Review

All administrative review requests will be screened by a Board member or a Board designee who may deny further review of the following matters:

(1) Findings of aggravation when the Board has set the prison term within or below the matrix range;

(2) Findings of aggravation when the Board has not overridden a judicial minimum and the prison term has been set equal to the judicial minimum;

(3) Matters which have previously been appealed and decided on the merits by either the Board or the appellate court(s);

(4) Administrative review requests considered untimely pursuant to rule 255-080-0005;

(5) Subject matter of a hearing or review and/or Board order other than the Board order being appealed;

(6) Matters that will not change the parole release date or conditions or length of supervision;

(7) Board orders that are not final;

(8) Errors previously corrected;

(9) Order which sustains a minimum term and the inmate/offender does not contest the crime severity rating and history risk score;

(10) Order which denies, grants or grants in part an inmate/offender's request for a prison term reduction based upon outstanding reformation under ORS 144.122;

(11) Order which refers an inmate/offender for psychological evaluation;

(12) Order which postpones an inmate/offender's release date because of:

(a) A Board finding of dangerousness under ORS 144.125(3) and OAR 255-060-0012;

(b) An inmate/offender's refusal to submit to a psychological evaluation;

(13) Order which postpones an inmate/offender's release date because of serious misconduct during confinement; or

(14) Order which denies an inmate/offender's request under ORS 144.228(1) for an early parole consideration hearing.

(15) Order which sets an initial release date under ORS 144.120, except if inmate/offender contests the crime severity rating, the history risk score or aggravating factors found by the Board under Board rules;

(16) Order which sets a date for a parole consideration hearing under ORS 144.228;

(17) Order which sets a release date or declines to set a release date after a parole consideration hearing under ORS 144.228.

Stat. Auth.: ORS 144.335

Stats. Implemented: ORS 144.335

Hist.: PAR 2-1991, f. & cert. ef. 2-20-91; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 7-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 7-2000, f. & cert. ef. 6-9-00; PAR 9-2004(Temp), f. & cert. ef. 9-3-04 thru 3-1-05; PAR 12-2004, f. & cert. ef. 11-2-04

Board of Pharmacy Chapter 855

Adm. Order No.: BP 7-2004

Filed with Sec. of State: 11-8-2004

Certified to be Effective: 11-8-04

Notice Publication Date: 10-1-04

Rules Amended: 855-050-0070

Subject: Oregon Administrative Rule 855-050-0070 designates products containing ephedrine as pharmacy drugs. It also provides a list of ephedrine products exempt from this designation. This rule change will add Bronch-eze and Bronch-eze Max to the list of ephedrine products exempt from the designation as prescription drugs.

Rules Coordinator: Karen MacLean—(503) 731-4032, ext. 223

855-050-0070

Prescription Drugs

(1) The following are prescription drugs:

(a) Drugs required by federal law to be labeled with either of the following statements:

(A) "Caution: Federal law prohibits dispensing without prescription";

(B) "Caution: Federal law restricts this drug to be used by or on the order of a licensed veterinarian"; or

(C) "Rx only."

(b) Drugs designated as prescription drugs by the Oregon Board of Pharmacy.

(2) The Oregon Board of Pharmacy designates the following drugs as prescription drugs:

(a) Preparations containing codeine or salts of codeine.

(b) Preparations containing opium/paregoric.

(c) Preparations containing ephedrine or salts of ephedrine.

(3) The following brand name products and their generic equivalents are exempt from designation as prescription drugs under (2) of this section:

(a) Bronkaid Tablets;

(b) Pazo Hemorrhoid Ointment and Suppositories;

(c) Primatene Tablets;

(d) Bronch-eze;

(e) Bronch-eze Max.

(4) No person shall sell, give away, barter, transfer, purchase, receive or possess prescription drugs except upon the prescription of a practitioner.

(5) Manufacturers, wholesalers, institutional and retail drug outlets and practitioners are exempt from the prohibition of subsection (4).

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: PB 3-1990, f. & cert. ef. 4-5-90; PB 9-1990, f. & cert. ef. 12-5-90; PB 4-1991, f. & cert. ef. 9-19-91; BP 1-2002, f. & cert. ef. 1-8-02; BP 7-2004, f. & cert. ef. 11-8-04

Bureau of Labor and Industries Chapter 839

Adm. Order No.: BLI 12-2004

Filed with Sec. of State: 10-22-2004

Certified to be Effective: 10-25-04

Notice Publication Date: 7-1-04

Rules Amended: 839-003-0025

Subject: The amendments conform the agency's rule to the provisions of ORS 659A.820(1) relating to administrative actions for unlawful discrimination, whereby, except as provided in ORS 654.062, a complaint filed for unlawful discrimination under this sec-

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tion must be filed no later than one year after the alleged unlawful practice. The amendments also make technical changes.

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

839-003-0025

Filing a Complaint

(1) A person or the person's attorney may file a complaint, in person or by mail, with the division at any bureau office in the state of Oregon. The complaint must meet the standards provided in OAR 839-003-0005(4).

(2) The filing date is the date the division receives a complaint that meets the standards contained in OAR 839-003-0005(4).

(3) Except as provided in section (5) of this rule, a person must file a complaint with the division no later than one year after the alleged unlawful practice. If the alleged unlawful practice is of a continuing nature, the right to file a complaint exists so long as the person files the complaint within one year of the most recent date the unlawful practice occurred.

(4) A person alleging constructive discharge must file a discrimination complaint with the division within one year of the date the discharge occurred.

(5) A person alleging discrimination for reporting or opposing unsafe or unhealthy work conditions under ORS 654.062 must contact the division within 30 days of having reasonable cause to believe that such violation has occurred. An employee would have reasonable cause to believe a violation has occurred on the earliest date that the employee:

(a) Believed retaliation had occurred against the employee for opposing employee health and safety hazards; and

(b) Knew or should have known of the right to file a complaint with the division and of the requirement that the complaint be filed within 30 days of the alleged retaliation.

(A) If a notice required by OSEA, as provided in OAR 437-001-0275(2)(a), was properly posted in the employee's workplace, continuously on and following the date of the alleged retaliation, the division will find that the employee knew or should have known of the 30-day filing requirement.

(B) If the employer failed to post the required OSEA poster, the 30-day filing requirement will begin on the date the employee learned of the right to file a complaint and of the 30-day filing requirement. The employee may establish this date based on the employee's own statement or other evidence offered by the employee.

(C) If the employer disagrees with the employee's presented date as the date the employee learned of the right to file a complaint, the burden is on the employer to show that the employee knew or should have known on an earlier date.

(D) If extenuating circumstances exist, the division may extend the 30-day period as provided in 29 CFR Part 15(d)(3).

(6) The procedures for filing a complaint are as follows:

(a) A person or the person's attorney makes an inquiry to the division;

(b) The division may provide the person or the person's attorney with a letter of information and/or questionnaire to assist in determining if there is a basis for filing a complaint;

(c) If the division determines the person has a basis for filing a complaint, the division will draft a complaint based upon the information provided by the person and send or give the complaint to the person or the person's attorney for verification. The person or the person's attorney will request any necessary changes to the complaint.

(d) The person or the person's attorney will verify and sign the complaint. The complaint will then be submitted to the division.

(e) If the person is an unemancipated minor the complaint must be signed by the minor and the parent or legal guardian of the minor.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.670-685, 654.062, 659A.820 & 29 CFR Part 15(d)(3)

Hist.: BL 7-1981, f. & cert. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 12-2004, f. 10-22-04 cert. ef. 10-25-04

Adm. Order No.: BLI 13-2004

Filed with Sec. of State: 10-19-2004

Certified to be Effective: 10-19-04

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.

(f) *Special Prevailing Wage Rate Determination for Residential Project, Headwaters Apartments, Project #2004-06*, dated October 14, 2004 for the period of October 19, 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; BLI 13-2004, f. & cert. ef. 10-19-04

Adm. Order No.: BLI 14-2004

Filed with Sec. of State: 10-29-2004

Certified to be Effective: 11-1-04

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

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(d) *Special Prevailing Wage Rate Determination for Residential Project, Hampden Lane, Project #2004-05*, dated July 13, 2004 for the peri-

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od of July 15, 2004 through June 30, 2005.

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[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; BLI 13-2004, f. & cert. ef. 10-19-04; BLI 14-2004, f. 10-29-04, cert. ef. 11-1-04

Adm. Order No.: BLI 15-2004

Filed with Sec. of State: 11-1-2004

Certified to be Effective: 11-3-04

Notice Publication Date: 10-1-04

Rules Amended: 839-050-0000, 839-050-0010, 839-050-0020, 839-050-0030, 839-050-0040, 839-050-0050, 839-050-0060, 839-050-0070, 839-050-0080, 839-050-0090, 839-050-0100, 839-050-0110, 839-050-0120, 839-050-0130, 839-050-0140, 839-050-0150, 839-050-0160, 839-050-0170, 839-050-0180, 839-050-0190, 839-050-0200, 839-050-0210, 839-050-0220, 839-050-0230, 839-050-0240, 839-050-0250, 839-050-0255, 839-050-0260, 839-050-0270, 839-050-0280, 839-050-0290, 839-050-0300, 839-050-0310, 839-050-0320, 839-050-0330, 839-050-0340, 839-050-0350, 839-050-0360, 839-050-0370, 839-050-0380, 839-050-0400, 839-050-0410, 839-050-0420, 839-050-0430, 839-050-0440

Rules Repealed: 839-050-0390

Subject: The proposed amendments correct technical errors, improve grammar and clarity and conform the Division 50 Contested Case Rules with the Oregon Administrative Procedures Act.

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

839-050-0000

Statement of Purpose

(1) The purpose of OAR 839-050-0000 to 839-050-0440 is to insure that the contested case procedures of the Bureau of Labor and Industries comply with ORS 183.413 to 183.470, to provide clear guidelines and an understanding of what is expected of participants, and to provide for thorough and timely hearings.

(2) In an effort to provide timely hearings, OAR 839-050-0000 to 839-050-0440 establish time limits that will be strictly followed. Waiver or extension of set time limits will be granted only under the limited circumstances set forth in these rules.

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0020; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0010

Model Rules of Procedure

The Attorney General's Model and Uniform Rules of Procedure adopted pursuant to OAR 839-002-0005 govern operations of the Hearings Unit of the Bureau of Labor and Industries except to the extent they conflict with or are modified by rules in this division or any other division of chapter 839 of the Oregon Administrative Rules. The rules for contested case proceedings are set forth in OAR 839, division 50.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Bureau of Labor and Industries.]

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0022; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0020

Definitions

The following definitions apply, unless the context requires otherwise, to OAR 839-050-0000 through 839-050-0440:

(1) "Administrative law judge" means the commissioner or an individual or a special tribunal designated by the commissioner to preside over any or all aspects of a contested case hearing including motions, oral or written hearings, preparation of the Proposed Order and assistance in preparation of the Final Order. The administrative law judge may or may not be an employee of the Agency.

(2) "Agency" means the Bureau of Labor and Industries and any employee thereof, and includes the bureau when acting as the agent of another governmental entity, but for purposes of these rules does not refer to the administrative law judge or the commissioner.

(3) "Authorized representative" means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, or an authorized officer or employee of a governmental agency who has been authorized by the partnership, corporation, association, organized group, or governmental agency to represent that entity during the contested case proceeding.

(4) "Case presenter" means the Agency staff person assigned to present the case for the Agency at the contested case hearing and to handle all related matters, but does not include counsel for the Agency.

(5) "Charging document" means any document issued by the Bureau of Labor and Industries stating that any person, entity, or government agency has violated the laws within this Agency's jurisdiction and includes, but is not limited to:

(a) Formal Charges;

(b) Order of Determination;

(c) Notice of Intent to Revoke License;

(d) Notice of Intent to Deny License;

(e) Notice of Intent to Refuse to Renew a License;

(f) Notice of Intent to Place Name on List of Ineligibles;

(g) Notice of Intent to Assess Civil Penalties;

(h) Notice of Intent to Suspend or Revoke License or to Assess Civil Penalty in Lieu Thereof.

(6) "Claimant" means any individual who has filed a wage claim pursuant to ORS 652 or 653 and who has assigned that claim to the commissioner.

(7) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(8) "Complainant" means an individual who has, or whose attorney has, filed a complaint pursuant to ORS 658 or 659A, those statutes in ORS 279 enforced by the Bureau of Labor and Industries, and any laws, regulations, or ordinances enforced by the bureau as the agent of another governmental entity.

(9) "Counsel" means an attorney who is a member in good standing with the Oregon State Bar or a member in good standing of the bar of any United States court or the highest court of any state who is permitted to appear in a particular proceeding by order of the administrative law judge. Such permission will be given only in compliance with the requirements of ORS 9.241 and Uniform Trial Court Rule 3.170.

(10) "Counsel for the Agency" means the Attorney General or the Attorney General's designee. When the Agency's interests require representation by counsel and the Attorney General cannot represent the Agency, the Agency will arrange for the services of a private attorney.

(11) "Good cause" means, unless otherwise specifically stated, that a participant failed to perform a required act due to an excusable mistake or a circumstance over which the participant had no control. "Good cause" does not include a lack of knowledge of the law, including these rules.

(12) "Hearings Unit" means the section of the Bureau of Labor and Industries handling all aspects of contested case hearings. The address for the Unit is: Bureau of Labor and Industries, Hearings Unit, 1045 State Office Building, 800 N.E. Oregon Street, Portland, OR 97232-2162.

(13) "Issuance" means the act of sending out a document from the Hearings Unit. For purposes of these rules, the date of issuance is the date, as noted on the document, that the document was sent out from the Hearings Unit.

(14) "Participant" means any party, including any person or entity granted party status under OAR 137-003-0005, or the Agency.

(15) "Party" means:

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(a) Any person, government agency, or entity upon whom a charging document has been served;

(b) Any person, government agency, or entity that has been granted party or limited party status under OAR 137-003-0005.

(16) "Service" means, for purposes of these rules, the method of forwarding documents and includes personal service, registered or certified mail, hand delivery or regular U.S. mail.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0025; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0030

Service of Documents

(1) Except as may be otherwise provided in ORS 652.332(1) the charging document will be served on the party or the party's representative by personal service or by registered or certified mail. Service of a charging document is complete upon the earlier of:

(a) Receipt by the party or the party's representative; or

(b) Mailing when sent by registered or certified mail to the correct address of the party or the party's representative.

(2) All other documents may be served on the party or the party's representative by personal service or by mailing to the last known address in the Agency file for the case to be heard. Service of a document other than the charging document is complete upon personal service or mailing, whichever occurs earlier.

(3) Any participant to a contested case proceeding filing a document with the Hearings Unit will serve a copy of such document upon all other participants or their representatives.

(4) Each party must notify the Hearings Unit and the Agency of the party's change of address. Such notice must be in writing and served on the Hearings Unit and the Agency within 10 days of the party's change of address. Unless the Hearings Unit and the Agency have been so notified, they will presume that the party's address on file with the Agency is correct.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0030; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0040

Filing of Documents with the Hearings Unit; Calculation of Time and Filing Dates

(1) Except as modified by statute or enlarged by these rules, by order of the commissioner, or by decision of the administrative law judge, a document is filed with the Hearings Unit either on the date the Hearings Unit receives the document, or on the date postmarked on the properly addressed document, whichever is earlier.

(2) Documents are not to be filed by facsimile transmission except with the prior approval of the administrative law judge. The administrative law judge may require the participant filing a document by facsimile transmission to also send the Hearings Unit a copy of the document by mail or personal delivery and may require the participant to serve the other participants with the document by facsimile transmission in addition to mail or personal delivery.

(3) The computation of any period of time will not include the day from which the designated period begins to run. The computation will include the last day of this period unless it is a Saturday, Sunday, or holiday officially recognized by the State of Oregon or the federal government. If the last day of the time period is a Saturday, Sunday, or holiday, the period will run until 5 p.m. of the next day that is not a Saturday, Sunday, or holiday.

(4) All time periods described in these rules are measured in calendar days.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0035; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0050

Timeliness

(1) The administrative law judge has the discretion to disregard any

document that is filed with the Hearings Unit beyond the established number of days for filing.

(2) When a participant requires additional time to submit any document, a written request for such extension must be filed with and received by the Hearings Unit no later than the date set for filing of the document in question, except that the administrative law judge has discretion to permit a participant to make an oral motion for an extension of time. When the administrative law judge allows a participant to make an oral motion for extension of time, the administrative law judge will promptly notify the other participants of the motion and give them an opportunity to respond, either orally or in writing. When a participant files a written motion for extension of time, the other participants will have seven days after service of the motion in which to file a written response, unless that time is altered by order of the administrative law judge.

(3) The administrative law judge may grant such an extension of time only in situations when the requesting participant shows good cause for the need for more time or when no other participant opposes the request. The administrative law judge will promptly notify the participant requesting the extension whether it will be allowed.

(4) When an extension of time is allowed to a participant, the administrative law judge will advise all participants of the new due date, and will state whether the same extension of time applies to the other participants.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0040; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0060

Charging Documents

(1) A charging document will contain:

(a) A reference to the particular statutes or administrative rules involved in the violation;

(b) A short and concise statement of the matters that constitute the violation; and

(c) A statement of the remedies sought and, when appropriate, the penalty imposed.

(2) A charging document may contain statements that:

(a) When a party fails to timely request a hearing, or having made a timely request subsequently withdraws it, the Agency file will be the evidentiary record of the proceeding;

(b) When, following an answer and a request for hearing (when required), the party subsequently notifies the Agency that it will not appear at the hearing, or, without such notice, the party fails to appear at the hearing, the Agency's file may become part of the contested case record; and

(c) A statement that when a party fails to answer a charging document, the Agency file will automatically become part of the contested case record upon default for the purpose of proving a prima facie case.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0050; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0070

Request for a Contested Case Hearing

Except in cases when Formal Charges are issued, any party wishing to contest a charging document must request a contested case hearing. This request must be in writing and filed with the Agency within the time limit established in the charging document. A party that fails to file a request for a hearing within the time limit established in the charging document, or that requests a hearing and subsequently withdraws the request, will be in default as to those charges.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0051; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0080

Notice of Hearing

(1) When a party makes a timely written request for a contested case hearing, that hearing will be scheduled in accordance with OAR 839-050-0070 and the party will receive a notice of hearing. The Hearings Unit will issue a notice of hearing to the participants.

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(2) In cases when Formal Charges are filed, the notice of hearing will accompany the Formal Charges.

(3) The notice of hearing will contain:

(a) A statement of the time and place of the hearing, including the statement that the hearing will reconvene on successive business days thereafter until concluded;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved;

(d) A short and plain statement of the matters asserted or charged;

(e) The name of the administrative law judge designated by the commissioner to preside at the hearing and whether the administrative law judge is an employee of the Agency; and

(f) A statement indicating whether the case for the Agency will be presented by the Department of Justice or by an Agency case presenter.

(4) Sections (3)(c) and (d) above are satisfied if the notice of hearing attaches and incorporates a charging document that includes the matters referred to in those paragraphs.

(5) The notice of hearing may contain a statement that:

(a) When a party fails to timely request a hearing, or having made a timely request subsequently withdraws it, the Agency file will be the evidentiary record of the proceeding;

(b) When, following an answer and request for hearing (when required), the party subsequently notifies the Agency that the party will not appear at the hearing, or, without such notice, the party fails to appear at the hearing, the Agency file may become part of the contested case record; and

(c) When a party fails to answer a charging document, the Agency file will become part of the contested case record upon default for the purpose of proving a prima facie case.

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0055; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0090

Location of Contested Case Hearings

Contested case hearings will generally be held in a State of Oregon office building when available, or another appropriate facility, near the location where the action arose.

Stat. Auth.: ORS 183 & ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0045; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0100

Information for Contested Case Hearings

The Hearings Unit will provide a statement of information for all parties involved in a contested case hearing that includes:

(1) Instructions that all filings, correspondence and documents must be transmitted to the administrative law judge, through the Hearings Unit at this address: Bureau of Labor and Industries, Hearings Unit, 1045 State Office Building, 800 N.E. Oregon Street, Portland, OR 97232-2162;

(2) The information required under ORS 183.413(2) concerning the rights of the parties to the hearing;

(3) A statement that an order may be issued upon default if a party requesting a hearing fails to appear at the hearing and if the Agency has presented a prima facie case on the record; and

(4) A statement that the party's address as it appears in the Agency's files, and to which the notice has been sent, will be the address used throughout the proceeding. A party whose address changes must notify the Agency; otherwise, the Agency will presume the address on file to be correct.

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0056; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0110

Representation of a Party in a Contested Case Proceeding

(1) Any party may be represented by counsel, as that term is defined in OAR 839-050-0020(9). At all stages of the contested case proceeding, all government agencies, partnerships, corporations and unincorporated asso-

ciations must be represented either by counsel, who may perform all functions consistent with representation of a client, or by an authorized representative, subject to the limitations of sections (2) through (6) of this rule.

(2) For purposes of OAR chapter 839, division 50, "authorized representative" means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, or an authorized officer or employee of a governmental agency.

(3) Before appearing in the case, an authorized representative must provide written authorization for the named representative to appear on behalf of the party or limited party. This written authorization must be provided no later than the time that an answer and request for hearing is filed.

(4) An authorized representative may not present legal argument during the contested case proceeding except to the extent authorized by section 5 of this rule. "Legal argument" includes arguments on:

(a) The jurisdiction of the agency to hear the contested case;

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(c) The application of court precedent to the facts of the particular contested case proceeding.

(5) The administrative law judge may allow the authorized representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the Agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(6) When a party is represented by an authorized representative in a hearing, the administrative law judge will advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. When such objections may involve legal argument as defined in section 4 of this rule, the administrative law judge will provide reasonable opportunity for the authorized representative to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

(7) A party that intends to be represented by counsel during the contested case proceeding, and that is not a government agency, partnership, corporation or unincorporated association, will notify the Hearings Unit of its intent to be represented by counsel as soon as practicable. Once the contested case hearing has begun, no party will be allowed a recess to obtain the services of counsel.

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Hist.: BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0057; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 4-2002, f. 2-14-02, cert. ef. 2-15-02; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0120

Representation of a Claimant or Complainant in a Contested Case Proceeding

The claimant or complainant may have counsel present at the contested case hearing; however, counsel's participation is limited to rendering advice to counsel's client. Such counsel may not file motions, make objections, examine or cross-examine witnesses or make legal argument, except that such counsel may assert privilege for counsel's client at any point in a contested case proceeding and may participate fully in any deposition of counsel's client.

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0058; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 4-2002, f. 2-14-02, cert. ef. 2-15-02; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0130

Responsive Pleadings

(1) A party filing a written request for a hearing or a party served with Formal Charges must file a written response, referred to as an "answer," to the allegations in the charging document. Except as may be otherwise provided in ORS 652.332(1), the party must file the answer within 20 days after service of the charging document, except that the party must file the answer within 60 days after service of the charging document if that document proposes to deny a license. The answer must include an admission or denial of each factual matter alleged in the charging document and a state-

ADMINISTRATIVE RULES

ment of each relevant defense to the allegations. A general denial is not sufficient to constitute an answer. An answer not including the information required by this rule may be disregarded and a notice of default may be issued in accordance with OAR 839-050-0330, as if no answer had been filed.

(2) Except for good cause shown to the administrative law judge, factual matters alleged in the charging document and not denied in the answer will be deemed admitted by the party. The failure of the party to raise an affirmative defense in the answer is a waiver of such defense. Any new facts or defenses alleged in the answer will be deemed denied by the Agency. Evidence will not be taken at the contested case hearing on any factual or legal issue not raised in the charging document or the answer as originally filed or as amended pursuant to OAR 839-050-0140.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1987, f. 2-11-87, ef. 2-13-87; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0060; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0140 Amendments

(1) Prior to the hearing a participant may amend its pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a participant may amend its pleading only by permission of the administrative law judge or by written consent of the other participants. Permissible amendments to charging documents include, but are not limited to: additions to or deletions of charges; changes to theories of liability; and increases or decreases to the damages, penalties, or other remedies sought. Permissible amendments to answers include, but are not limited to, additions to or deletions of affirmative defenses. Permission will be given when justice so requires.

(2)(a) Once the hearing commences, issues other than affirmative defenses not raised in the pleadings may be raised and evidence presented on such issues, provided there is express or implied consent of the participants. Consent will be implied when there is no objection to the introduction of such issues and evidence or when the participants address the issues. Any participant raising new issues must move the administrative law judge, before the close of the evidentiary portion of the hearing, to amend its pleading to conform to the evidence and to reflect issues presented. The administrative law judge may address and rule upon such issues in the Proposed Order.

(b) If evidence is objected to at hearing on the grounds that it is not within the issues raised by the pleadings, the administrative law judge may allow the pleadings to be amended to conform to the evidence presented. The administrative law judge will allow the amendment when the participant seeking to amend its pleading shows good cause for not having included the new matter in its pleading prior to hearing and the objecting participant fails to satisfy the administrative law judge that it would be substantially prejudiced by the admission of such evidence. The administrative law judge may grant a continuance to enable the objecting participant to meet such evidence.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0075; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0150 Motions

Except as otherwise stated in OAR 839-050-0050, all pre-hearing and post-hearing motions will be submitted in writing to the administrative law judge through the Hearings Unit. If the nonmoving participant chooses to respond, the nonmoving participant must file a written response to a written motion within seven days after service of the motion, unless the administrative law judge orders otherwise. Motions include but are not limited to the following:

- (1) Motion to dismiss: This motion must be based upon:
 - (a) Lack of jurisdiction over the subject matter or person;
 - (b) Insufficiency of process or service of process; or
 - (c) Failure to state a claim upon which relief can be granted.
- (2) Motion to change the place of hearing.
- (3) Motion to exclude witnesses:

(a) The motion may be made by any participant at any time prior to or during the hearing. The administrative law judge may, without a motion being made by a participant, exclude witnesses until the time of final argument;

(b) The Agency case presenter is not subject to exclusion under this rule;

(c) Claimants and complainants are not subject to exclusion under this rule;

(d) A natural person who is a respondent in any capacity or who is a respondent's authorized representative under OAR 839-050-0110(2) is not subject to exclusion under this rule;

(e) A party that is a government agency, corporation, or unincorporated association, including a limited liability company, and that is represented by counsel, may have present at hearing one natural person designated to assist in the party's case who is not subject to exclusion under this rule.

(4) Motion for summary judgment:

(a) A motion for summary judgment may be made by a participant or by decision of the administrative law judge for an accelerated decision in favor of any participant as to all or part of the issues raised in the pleadings. The motion may be based on any of the following conditions:

(A) Issue or claim preclusion;

(B) No genuine issue as to any material fact exists and the participant is entitled to a judgment as a matter of law, as to all or any part of the proceedings; or

(C) Such other reasons as are just.

(b) When the administrative law judge grants the motion, the decision will be set forth in the Proposed Order.

(5) Motion for a postponement:

(a) Any participant making a request for a postponement of any part of the contested case proceeding must state in detail the reason for the request. The administrative law judge may grant the request for good cause shown. In making this determination, the administrative law judge will consider:

(A) Whether previous postponements have been granted;

(B) The timeliness of the request;

(C) Whether a participant has previously indicated it was prepared to proceed;

(D) Whether there is a reasonable alternative to postponement; for example, submitting a sworn statement of a witness; and

(E) The date the hearing was originally scheduled to commence.

(b) The administrative law judge will issue a written ruling either granting or denying the motion and will set forth the reasons therefore;

(c) If all participants agree to a postponement, in order for the postponement to be effective, the administrative law judge will approve of this agreement. Whether the administrative law judge grants or denies such a motion for postponement, the administrative law judge will issue a written ruling setting forth the reasons therefore.

(6) Motion for consolidation of hearings: This motion must allege facts sufficient to meet the criteria of OAR 839-050-0190.

(7) Motion for hearing by telephone: Any participant may file a motion to conduct the hearing by telephone. The motion must contain:

(a) A statement setting forth the reason(s) for the request;

(b) A statement explaining why no participant will be substantially prejudiced by having a hearing in this manner;

(c) A statement of the location of the majority of witnesses expected to be called;

(d) A statement estimating the number and/or volume of documents to be introduced into the record;

(e) A statement indicating whether the participant intends to call any expert witness; and

(f) A statement indicating whether an interpreter or an assistive communication device under OAR 839-050-0300 will be required for any witness.

(8) Motion for an earlier hearing date: After issuance of a notice of hearing, a participant may request an earlier hearing date upon a showing that the purposes of the law or the interests of justice would otherwise be frustrated.

(9) Motion for a protective order.

(10) Motion for default when a respondent has failed to timely file an answer within the time specified in the charging document.

(11) Motion to amend.

(12) Motion to make more definite and certain.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0070; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 4-2002, f. 2-14-02, cert. ef. 2-15-02; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

ADMINISTRATIVE RULES

839-050-0160

Disqualification of Administrative Law Judge

(1) An administrative law judge may withdraw from a proceeding whenever the administrative law judge determines disqualification to be necessary. Any party to any contested case may claim that the person designated as administrative law judge is prejudiced against any party or counsel or the interest of any party or counsel appearing in such case. Such prejudice must be established by a motion supported by an affidavit establishing that the designated administrative law judge is prejudiced against the party or counsel, or against the interest of the party or counsel, such that the party or counsel cannot, or believes that he or she cannot, have a fair and impartial hearing before the administrative law judge, and that it is made in good faith and not for the purpose of delay. Grounds upon which a motion may be made, or upon which the administrative law judge may determine that disqualification is necessary, include but are not limited to a family relationship with the complainant or claimant or with any party or counsel, or a financial interest in the property or business of any of those individuals. The fact that the administrative law judge is an employee of the Oregon Bureau of Labor and Industries is not a ground for disqualification of the administrative law judge.

(2) The motion and affidavit must be filed together within 14 days after service of the notice of hearing. No motion to disqualify an administrative law judge may be made after the administrative law judge has ruled upon any motion, other than a motion to extend time in the case, or after the hearing has commenced, whichever is earlier.

(3) The administrative law judge will issue a written ruling on the motion for withdrawal or disqualification, setting forth the grounds therefore, within ten days of the receipt of the motion. The ruling will be sent to the commissioner, the Agency, and all parties.

(4) When an administrative law judge has been disqualified, the commissioner will designate another administrative law judge to preside over the contested case proceeding. The Hearings Unit will notify the participants of this designation.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0065; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0170

Joinder of Parties, Claimants, or Complainants

(1) Complainants or claimants: Any number of persons may be joined in one action as complainants or claimants if they assert a right to relief arising out of the same or similar transaction(s) or occurrence(s) and if questions of law or fact common to all these persons will arise in the action.

(2) Parties: Any number of persons may be joined in one action as parties if there is asserted against them any right to relief arising out of the same transaction(s) or occurrence(s) and if questions of law or fact common to all these persons will arise in the action.

(3) The Final Order may find for or against one or more of the complainants or claimants or parties according to their respective rights or liabilities.

(4) Misjoinder of complainants, claimants, or parties is not a ground for dismissal of an action. Parties may be added or deleted by order of the administrative law judge upon the motion of any participant, upon the administrative law judge's own motion, or upon the application of any person or entity seeking party or limited party status, at any stage of the contested case proceeding. When necessary to complete disposition of the case, the administrative law judge may postpone the hearing to allow a newly added complainant, claimant, or party to prepare for the hearing.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0085; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0180

Dual Hearings

(1) The commissioner may hold a hearing in conjunction with the Wage and Hour Commission to resolve the allegations set forth in two or more charging documents when:

- (a) The same evidence will be presented in both cases; and
- (b) There will not be substantial prejudice to any party.

(2) The issues in both cases need not be the same, nor must the same enforcement means or damages be sought.

- (3) Such hearings may be combined even when the commissioner and

the Wage and Hour Commission will issue separate Final Orders.

(4) The same administrative law judge may be designated by the commissioner as is designated by the Wage and Hour Commission to conduct the hearing. Conduct of the hearing includes establishing the procedure for the hearing, questioning of witnesses, and ruling on motions and objections to evidence.

(5) The administrative law judge will issue a Proposed Order to the commissioner in the case. All other rules governing the issuance of any charging document or the hearings process apply to dual hearings.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0090; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0190

Consolidation of Hearings

The administrative law judge may order a joint contested case hearing for two or more cases when the administrative law judge determines that the cases involve common questions of law or fact. The administrative law judge, in conducting the hearing, may establish procedures necessary to avoid additional costs or delay.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0095; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0200

Discovery

(1) The administrative law judge has the discretion to order discovery by a participant in appropriate cases. This rule does not require the administrative law judge to authorize any discovery. If the administrative law judge does authorize discovery, the administrative law judge will control the methods, timing, and extent of discovery, but nothing in this rule prevents informal exchanges of information. When the administrative law judge orders discovery, the administrative law judge will notify the participants of the possible sanction, pursuant to section (11) of this rule, for failure to provide the discovery ordered.

(2) Discovery may include but is not limited to one or more of the following:

- (a) Disclosure of names and addresses of witnesses expected to testify at the hearing;
- (b) Production of documents;
- (c) Production of objects for inspection or permission to enter upon land to inspect land or other property;
- (d) Written interrogatories to be served on a participant; and
- (e) Requests for admission.

(3) Depositions are strongly disfavored and will be allowed only when the requesting participant demonstrates that other methods of discovery are so inadequate that the participant will be substantially prejudiced by the denial of a motion to depose a particular witness.

(4) Except as provided in sections (6) and (9) of this rule, before requesting a discovery order, a participant must seek the discovery through an informal exchange of information.

(5) Except as provided in sections (6) and (9) of this rule, a request for a discovery order must be filed with the Hearings Unit, be in writing, and must include a description of the attempts to obtain the requested discovery informally. The administrative law judge will consider any objections by the participant from whom discovery is sought.

(6) A participant seeking information from another participant by means of written interrogatories may serve that participant with up to 25 interrogatories, including all discrete subparts, to be answered by the participant served, or, in the case of a corporation, unincorporated association, or government agency, by its officer or agent. A participant wishing to serve another participant with more than 25 interrogatories must file a motion identifying the participant to be served, setting forth a general description of the nature of the information to be sought and its relevance, and explaining why the additional interrogatories are necessary. Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party must state the reasons for objection and must answer to the extent the interrogatory is not objectionable. The answers are to be signed by the person making them. The participant served with interrogatories must serve its answers and objections, if any, within 14 days after service of the interrogatories. The administrative law judge may alter the deadline for answers to interrogatories upon motion

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by either participant.

(7) Any discovery request must be reasonably likely to produce information that is generally relevant to the case. If the relevance of the requested discovery is not apparent, the administrative law judge may require the participant requesting discovery to explain how the request is likely to produce relevant information. If the request appears unduly burdensome, the administrative law judge may require an explanation of why the requested information is necessary or is likely to facilitate resolution of the case.

(8) The administrative law judge will issue an order granting or denying a discovery request in whole or in part. Participants must comply with such orders and have a continuing obligation, through the close of the hearing, to provide the other participants with any newly discovered material that is within the scope of the discovery order.

(9) Unless limited by the administrative law judge, the participants may issue subpoenas in support of discovery. Counsel representing a party may issue subpoenas in the same manner as subpoenas are issued in civil actions, as set forth in the Oregon Rules of Civil Procedure. The administrative law judge may issue subpoenas in support of discovery for any party not represented by counsel. The Bureau of Labor and Industries may apply to the circuit court to compel obedience to a subpoena.

(10) A party wishing the administrative law judge to issue a subpoena on its behalf must file a motion with the Hearings Unit as soon as practicable after it is served with the notice of hearing, but in no event less than seven days prior to hearing. The motion must include a showing of general relevance and reasonable scope of the evidence sought. If the motion is granted, the Hearings Unit will deliver the subpoena to the party that requested it. The party will then be responsible for serving the subpoena and for paying any applicable witness fees.

(11) The administrative law judge may refuse to admit evidence that has not been disclosed in response to a discovery order or subpoena, unless the participant that failed to provide discovery shows good cause for having failed to do so or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the administrative law judge admits evidence that was not disclosed as ordered or subpoenaed, the administrative law judge may grant a continuance to allow an opportunity for the other participant(s) to respond.

(12) The authority to order and control discovery rests with the administrative law judge.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-115; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0210

Case Summary

(1) Prior to any contested case hearing, the administrative law judge may issue a discovery order directing the participants to prepare a case summary containing any or all of the following:

(a) A list of all persons to be called as witnesses, including expert witnesses, at the hearing, except that impeachment or rebuttal witnesses need not be included on the witness list;

(b) The qualifications of any expert witnesses and the substance of the facts and opinions to which the experts are expected to testify;

(c) Identification and description of any document or other physical evidence to be offered into evidence at the hearing, together with two copies of any such document, except that evidence offered solely for impeachment or rebuttal need not be identified or furnished;

(d) Statement of any defenses to the claim;

(e) Statement of the elements of the claim;

(f) Statement of any agreed or stipulated facts;

(g) Statement of remedies proposed by the Agency and the reasons therefor, together with any damage computations;

(h) Statement, when appropriate, of any applicable agency policies together with, in the discretion of the Agency, any supporting documents or information on which such policies are based.

(2) When a party is unrepresented by counsel, the administrative law judge may order the party to produce a summary of the case containing only the information and documents described in subsections (1)(a), (b), and (c) of this rule.

(3) Each participant must serve a copy of its case summary, including all documents or other physical evidence to be offered into evidence at the hearing as described in (1)(c) of this rule, on the other participants. Following production of the case summary and before the start of the hearing, a participant must, as soon as practicable, file and serve the other par-

ticipants with an addendum to its case summary if the participant intends to offer as evidence at the hearing any additional documents, physical exhibits, or testimony that was not identified in the original case summary. The addendum must meet the requirements of paragraphs (1)(a), (1)(b), and (1)(c) of this rule, as applicable. As with the original case summary, evidence to be offered solely for impeachment or rebuttal need not be identified or furnished.

(4) When the administrative law judge orders a case summary, the administrative law judge will notify the participants of the possible sanction, pursuant to OAR 839-050-0210(5), for failure to provide the case summary.

(5) The administrative law judge may refuse to admit evidence that has not been disclosed in response to a case summary order, unless the participant that failed to provide the evidence offers a satisfactory reason for having failed to do so or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the administrative law judge admits evidence not provided in response to a case summary order, the administrative law judge may grant a continuance to allow an opportunity for the other participants to respond.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 6-1989, f. & cert. ef. 9-5-89; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0071; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 4-2002, f. 2-14-02, cert. ef. 2-15-02; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0220

Informal Disposition of Contested Case

(1) An informal disposition of a contested case occurs when, after the Agency issues a charging document, a case is resolved by stipulation, agreed settlement, consent order, settlement agreement, or default.

(2) When a party is interested in settling a case prior to the contested case hearing, the party should contact the Agency case presenter or other individual named in the notice of hearing who is scheduled to present the case for the Agency. Settlement negotiations do not serve as a basis for a postponement of the hearing, and participants should continue to prepare for hearing until they reach an agreement to settle and the Hearings Unit is so notified. An agreement to settle is reached when the participants have made an agreement to resolve the contested case and have agreed, orally or in writing, to the specific conditions of their agreement.

(3) When an agreement to settle is reached before the date of hearing, the participants will immediately notify the Hearings Unit. If such notice is given before the case summary due date, the case summary need not be filed by the participants that have reached an agreement to settle. The participants will file settlement documents with the Hearings Unit as soon as they are fully executed. If the participants have not filed fully executed documents with the Hearings Unit before the time set for hearing, at that time the participants must:

(a) Submit all necessary settlement documents, fully executed; or

(b) Put the settlement terms in writing and fully execute the written document as provided in subsection (8) of this rule.

(4) When the participants notify the Hearings Unit before a hearing that an agreement to settle has been reached, but fail to submit fully executed settlement documents before or at the time set for hearing and disagree on the record as to the specific terms of the agreement to settle, the administrative law judge may hold the hearing as scheduled if the participants agree or reschedule the hearing as soon as practicable, with the date being determined by the administrative law judge. Unless the administrative law judge and all participants agree, the new date of hearing will be no sooner than 14 days from the original date set for hearing. No further postponement will be allowed on the basis of a purported settlement and the case summary requirement will not be waived for the rescheduled hearing as provided in subsection (3) of this rule.

(5) When a settlement is reached at the time set for hearing or during the hearing, the administrative law judge may grant a recess in order to allow the participants time to prepare and fully execute all necessary settlement documents.

(6) Fully executed settlement documents submitted to the Hearings Unit will not contain terms that the Agency lacks the authority to enforce or is not a party to, such as an agreement by the claimant(s) or complainant(s) not to pursue legal actions against respondent(s) other than the claim or complaint being settled.

(7) Fully executed settlement documents submitted to the Hearings Unit will not contain provisions requiring the settlement terms to be confidential or requiring the claimant(s), complainant(s), or the Agency to keep

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the settlement terms confidential.

(8) "Fully executed" means that settlement documents are signed by the following persons:

(a) When the charging document is entitled "Formal Charges," the complainant(s), respondent(s), and the Civil Rights Division administrator or the administrator's designee from the division.

(b) When the charging document is entitled "Order of Determination," respondent(s), and the Wage and Hour Division administrator or the administrator's designee from the division.

(c) When the charging document is entitled "Notice of Intent," respondent(s), and the Wage and Hour Division administrator or the administrator's designee from the division.

(d) In addition to the necessary signatories named in (a) – (c), settlement documents may be signed by Agency case presenters and may be approved "as to form and content" by attorneys for respondents, claimants, and complainants.

(9) Participants waive their right to a contested case hearing by their signatures on fully executed settlement documents.

(10) When a contested case is resolved by informal disposition other than default (see OAR 839-050-0330), the administrative law judge will incorporate the settlement terms into a Final Order on Informal Disposition. When an Order of Determination or Notice of Intent has been issued, but a Notice of Hearing has not been issued, the fully executed settlement document may be incorporated into a Final Order on Informal Disposition by either the Administrator of the Wage and Hour Division or an administrative law judge.

(a) The Hearings Unit will deliver or mail a copy of a Final Order on Informal Disposition issued by an administrative law judge, and the Wage and Hour Division will deliver or mail a copy of a Final Order on Informal Disposition issued by the Administrator of the Wage and Hour Division, to each participant and, if applicable, to the participant's attorney of record.

(b) A Final Order on Informal Disposition is not subject to ORS 183.470.

(c) A Final Order on Informal Disposition is not subject to judicial review.

(d) Within 60 days after a Final Order on Informal Disposition is issued, a participant may petition the Bureau of Labor and Industries to set aside the order on the ground that the informal disposition was obtained by fraud or duress.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 6-1989, f. & cert. ef. 9-5-89; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0200; BL 12-1996, f. & cert. ef. 12-10-96; BLI 3-1998, f. & cert. ef. 2-11-98; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0230

Authority of the Case Presenter

(1) The case presenter is authorized by ORS 183 to appear on behalf of and represent the Agency. The case presenter may perform any function not prohibited by this rule.

(2) The case presenter may not present legal argument during the contested case proceeding except to the extent authorized by section 3 of this rule. "Legal argument" includes arguments on:

(a) The jurisdiction of the agency to hear the contested case;

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(c) The application of court precedent to the facts of the particular contested case proceeding.

(3) The administrative law judge may allow the case presenter to present evidence; examine and cross-examine witnesses; and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the Agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(4) When a case presenter is representing the Agency in a hearing, the administrative law judge will advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. When such objections may involve legal argument as defined in section 2 of this rule, the administrative law judge will provide reasonable opportunity for the case presenter to consult legal counsel and permit such legal counsel to file written legal

argument within a reasonable time after the conclusion of the hearing.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0059; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0240

Responsibilities of the Administrative Law Judge

The commissioner designates as administrative law judges those employees who are employed by the Agency as hearings officers and those persons who are appointed to preside at particular hearings. The commissioner delegates to such designee the authority to:

(1) Rule on all motions filed prior to the hearing.

(2) Issue subpoenas and otherwise oversee the discovery process in a manner consistent with rules relating to these powers.

(3) Hold appropriate conferences, if necessary, before or during the course of the hearing to discuss the conduct of the proceedings or the issues to be presented.

(4) Regulate the course of the hearing, including scheduling, reconvening, and adjourning.

(5) Maintain order during the course of the hearing, including the authority to expel persons whose conduct is disruptive.

(6) Make rulings on motions or evidence, with or without objection, during the hearing.

(7) Question witnesses at the hearing and set time limitations for argument or presentation.

(8) Limit or extend filing periods.

(9) Decide procedural matters, but not grant motions for summary judgment or other motions by a party that involve final determination of the proceeding, but to issue a Proposed Order as provided for in these rules. Nothing in this section may be construed to prohibit the administrative law judge from making a routine disposition of a hearing proceeding based on a settlement, on the Agency's withdrawal of the charging document, or on other reasons not requiring a Final Order by the commissioner.

(10) Prepare a Proposed Order at the conclusion of the contested case hearing and send it to the Agency, the commissioner, and all parties to the case; and at the request of the commissioner, assist in responding to any exceptions and the preparation of the Final Order.

(11) Take any other action consistent with the duties of an administrative law judge.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0100; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0250

Conduct of Hearings

The hearing will be conducted by and under the control of the administrative law judge.

(1) The administrative law judge will open the hearing with a brief introduction of the Agency, the parties and issues, including all information required by ORS 183.413(2) and 183.415(7).

(2) Each participant may be given an opportunity to make an opening statement describing the evidence and issues to be presented at the hearing.

(3) The Agency will present evidence in support of the charging document.

(4) Any person, government agency, or entity granted party status may present additional evidence in support of the charging document.

(5) Each party opposing the charging document must present evidence in support of the party's position.

(6) Participants will have the right to conduct cross-examination of adverse witnesses.

(7) Participants may present rebuttal evidence.

(8) Participants may be given the opportunity to make a closing statement at the conclusion of the testimony.

(9) The administrative law judge has the right to question any witness.

The administrative law judge may request any participant to provide additional evidence, and may recess the hearing when necessary to allow the participant the opportunity to gather and present the requested evidence.

(10) In any proceeding the administrative law judge may call the participants together for a pre-hearing conference in order to ascertain what is disputed, hear argument on motions, order discovery, or resolve procedural matters. At any time during the hearing, the administrative law judge may recess the hearing in order to conduct such a conference. The results

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of any conference will be summarized on the record, except that argument on motions will be recorded verbatim.

(11) When the testimony of a witness not present at the hearing is necessary to the complete and fair adjudication of the case, the administrative law judge may admit testimony of the witness by telephone or other two-way communication device. In such cases:

(a) The testimony of the witness will be broadcast simultaneously to all participants and to the administrative law judge;

(b) All rules governing the questioning of witnesses present at the hearing apply to witnesses whose testimony is taken by telephone; and

(c) The participant presenting the witness by telephone will provide the witness's telephone number and the approximate time that the witness will be available.

(12) The Agency has the right to submit a statement of policy concerning any issue that may arise in the course of the hearing.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0105; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0255

Telephone Hearings

(1) A "telephone hearing" is one in which at least one participant is not physically present at the hearing but participates by telephone or other two-way communication device.

(2) The administrative law judge has the discretion to hold a hearing or portion of a hearing by telephone. Nothing in this rule precludes the administrative law judge from allowing some parties or witnesses to attend by telephone while others attend in person.

(3) The administrative law judge may direct that a hearing be held by telephone upon request or on the administrative law judge's own motion.

(4) Unless otherwise ordered by the administrative law judge, up to ten days before the telephone hearing each participant must deliver to the Hearings Unit and each other participant copies of documentary evidence that it will seek to introduce into the record and a list of all persons to be called as witnesses.

(5) The administrative law judge may refuse to admit evidence not disclosed as required by section (4) of this rule, unless the participant that failed to provide the documentary evidence and the list of witnesses offers a satisfactory reason for having failed to do so or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the administrative law judge admits evidence that was not disclosed as required, the administrative law judge may grant a continuance to allow an opportunity for the other participant(s) to respond.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 4-2002, f. 2-14-02, cert. ef. 2-15-02; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0260

Evidence

(1) All evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs, including hearsay if reliable, will be admissible.

(2) Irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(3) The burden of presenting evidence to support a fact or proposition rests on the proponent of that fact or proposition.

(4) The burden of presenting evidence to establish a prima facie case rests with the Agency.

(5) When appropriate, the burden of proving failure to mitigate damages rests with the party.

(6) Any witness, including Agency staff, may submit evidence to the administrative law judge.

(7) All offered evidence to which there is no objection may be received by the administrative law judge subject to the administrative law judge's power to exclude irrelevant, immaterial, or unduly repetitious matters.

(8) Evidence on which an objection is made may be taken by the administrative law judge. Rulings on the admissibility or exclusion of this evidence will be made at the hearing or at the time the Proposed Order in the case is issued.

(9) Any affidavit, certificate, or document included with a case summary or that a participant serves on the other participants at least ten days

before hearing may be offered and received into evidence unless cross-examination is requested of the affiant, certificate preparer, or other document preparer or custodian no later than five days prior to hearing or, for good cause shown, by such other date as the administrative law judge may set. An affidavit or certificate may be offered and received with the same effect as oral testimony.

(10) If cross-examination is requested of the affiant, certificate preparer or other document preparer or custodian as provided in section (9) of this rule and the preparer is not made available for cross-examination, but the affidavit, certificate or other document is offered in evidence, the same may be received in evidence, provided the administrative law judge determines that:

(a) The contents of the document are otherwise admissible; and

(b) The participant requesting cross-examination would not be substantially prejudiced by the lack of cross-examination.

(11) The administrative law judge will accept an offer of proof made for excluded evidence. The administrative law judge has the discretion to decide when and in what form the offer of proof will be made and may place reasonable time or page limits on the offer of proof.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0120; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0270

Exhibits

(1) Hearing participants must premark their exhibits. Agency exhibits will be marked with "A" (for example, A-1, A-2, etc.), and respondent exhibits will be marked with "R" (for example, R-1, R-2, etc.). The administrative law judge will preserve the exhibits received as part of the record of the proceedings.

(2) All paper exhibits must be no larger than 8 1/2 by 11 inches in size and the participant presenting this exhibit must bring two copies of the exhibit to the hearing in addition to the copies already provided with the case summary. Participants must bring four copies of rebuttal or impeachment exhibits to the hearing unless those exhibits were previously submitted with the case summary, in which case only two additional copies are required at the hearing.

(3) Larger exhibits are allowed; however, in order to be included in the record, the information contained in the exhibit must be reduced to paper 8 1/2 by 11 inches in size.

(4) Variation from the exhibit size requirements will be allowed only when there is no reasonable alternative.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0125; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 4-2002, f. 2-14-02, cert. ef. 2-15-02; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0280

Stipulation

(1) Prior to the hearing, participants to a contested case may agree to all or some of the facts involved in the controversy. This may be done through a written and signed stipulation or an oral stipulation made on the record during a prehearing conference. Such a stipulation of facts is binding upon those who agree to it and will be regarded and used as evidence at the hearing. During the hearing, participants may stipulate to facts involved in the controversy. The administrative law judge is bound by the facts set forth in a stipulation, but not by any conclusion drawn from those facts.

(2) Any party interested in stipulating to all or any part of the facts involved in the case should contact the Agency case presenter identified in the notice of hearing. The Agency may also contact any party requesting that a stipulation be entered on all or any part of the facts.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0135; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0290

Witnesses

All testimony to be taken at the hearing, except matters officially noticed or entered by stipulation, will be sworn or affirmed. This may

ADMINISTRATIVE RULES

include testimony given on deposition, by affidavit, or in answers to interrogatories.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0140; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0300

Interpreters and Assistive Communication Devices

(1) When a person unable to speak or understand the English language, or having a physical hearing or speaking impairment, is involved in a contested case hearing, such person is entitled to a qualified interpreter or appropriate assistive communication device. All interpreters will be appointed by the administrative law judge. A participant wishing to obtain the services of an interpreter or to obtain an assistive communication device must notify the administrative law judge no later than 20 days before the hearing.

(2) Upon receipt of such request, the Hearings Unit will arrange for the services of an interpreter or for the use of an assistive communication device and will notify the participants of the identity of the interpreter. When such services are necessary, the Agency will compensate the interpreter and provide for the use of an assistive communication device at the Agency's expense.

(3) The administrative law judge will ask interpreters to state on the record their name and whether they are an Oregon Certified Court Interpreter under ORS 45.291. If so, the interpreter need not be administered a new oath or submit qualifications on the record. If an interpreter is not an Oregon Certified Court Interpreter under ORS 45.291, the administrative law judge will ask the interpreter to state the interpreter's qualifications on the record and take an oath regarding responsibilities to make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment and to act in accordance with the standards and ethics of the interpreter profession.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0145; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 4-2002, f. 2-14-02, cert. ef. 2-15-02; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0310

Ex Parte Communications

The administrative law judge will place on the record a statement of the substance of any ex parte communication on a fact in issue made to the administrative law judge while the proceeding is pending. Participants will be given notice of such ex parte communication and of their right to rebut the substance of the ex parte communication on the record.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0101; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0320

Official Notice

The administrative law judge and commissioner may take notice of judicially cognizable facts and of general, technical, or scientific facts within the specialized knowledge of the administrative law judge or commissioner. Participants will be notified at any time during the proceeding of material officially noticed, and they will be afforded the opportunity to contest the fact so noticed. The notice required by this section may be given to the participants during the hearing, prior to the issuance of the Proposed Order, or in the Proposed Order in the matter.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0130; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 4-2002, f. 2-14-02, cert. ef. 2-15-02; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0330

Default

(1) Default may occur when:

- (a) A party fails to file a required response, including a request for hearing or an answer, within the time specified in the charging document;
- (b) A party withdraws a request for hearing;
- (c) The Hearings Unit has scheduled a hearing and a party notifies the

Agency or the administrative law judge that the party will not appear at the specified time and place; or

(d) A party fails to appear at the scheduled hearing.

(2) When a party notifies the Agency that it will not appear at the specified time and place for the contested case hearing or, without such notification, fails to appear at the specified time and place for the contested case hearing, the administrative law judge will take evidence to establish a prima facie case in support of the charging document and will then issue a Proposed Order to the commissioner and all participants pursuant to OAR 839-050-0370. Unless notified by the party, the administrative law judge will wait no longer than 30 minutes from the time set for the hearing in the notice of hearing to commence the hearing.

(3) When a party is in default and the administrative law judge has not granted relief from default, the administrative law judge will not permit the party to participate in any manner in the subsequent hearing, including, but not limited to, presentation of witnesses or evidence on the party's own behalf, examination of Agency witnesses, objection to evidence presented by the Agency, making of motions or argument, and filing exceptions to the Proposed Order.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1987, f. 2-11-87, ef. 2-13-87; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0185; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0340

Relief from Default

(1) Relief from default may be granted when good cause is established within ten days after any of the following:

(a) A Final Order by default has been issued by the administrator of the Wage and Hour Division;

(b) A notice of default has been issued; or

(c) A party has failed to appear at a hearing.

(2) The request for relief from default must be in writing and be accompanied by a written statement, together with appropriate documentation, setting forth the facts supporting the claim of good cause.

(3) A request for relief from default made after a Final Order by default has been issued by the administrator of the Wage and Hour Division must be addressed to the administrator of the Wage and Hour Division and ruled upon by an administrative law judge. When the administrator of the Wage and Hour Division receives a request for relief from default, the administrator will forward that request to the Hearings Unit for assignment to an administrative law judge, along with a copy of the Final Order by default. The administrator may also file a response to the request for relief from default. Any response the administrator files will be served on the requesting party.

(4) A request for relief from default made after a notice of default has been issued or after the party has failed to appear at a hearing will be addressed to and ruled upon by the administrative law judge.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1987, f. 2-11-87, ef. 2-13-87; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0190; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0350

Record of Proceeding

(1) A verbatim, written and/or mechanical record of the proceeding will be made that includes:

(a) All pleadings, motions, legal memoranda, correspondence, and rulings made by the administrative law judge;

(b) The case summary submitted by any participant;

(c) Evidence received or considered;

(d) Stipulations approved by the administrative law judge;

(e) A statement of matters officially noticed;

(f) Questions asked, offers of proof and objections and rulings made during the hearing;

(g) A statement of any ex parte communications on a fact at issue made to the administrative law judge;

(h) The Proposed Order by the administrative law judge;

(i) Exceptions filed by any participant;

(j) Nonconfidential advice from counsel to the Agency;

(k) Policy statements submitted by the Agency; and

(l) The commissioner's Final Order.

(2) The record in the case does not close until the Hearings Unit has

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received all documents, statements, and advice requested. The administrative law judge will determine the date upon which the record closed.

(3) The written or mechanical record ordinarily will not be transcribed unless requested for purposes of court review.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0150; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0360

Post-Hearing Briefs

(1) The administrative law judge may request a post-hearing brief from a participant. The administrative law judge will state the specific issues to be briefed and the deadline for filing the brief.

(2) If a party's brief contains legal argument as defined in OAR 839-050-0110(4), the party must file its brief through counsel, except if the party is an individual who is not required under OAR 839-050-0110(1) to be represented by counsel and personally files the brief. The Agency may respond to the administrative law judge's request by filing a legal brief from the Attorney General or an Agency statement of policy. Unless filed by the Attorney General, the Agency's statement of policy may not contain legal argument as defined in OAR 839-050-0110(4).

(3) Nothing in this rule limits the administrative law judge's authority to request a statement of policy from the Agency.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0155; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0370

Proposed Orders

(1) The administrative law judge will prepare and serve upon the commissioner and all participants a Proposed Order including the following:

(a) Rulings, motions, or objections, including those rulings previously reserved;

(b) Findings of fact, including those matters at issue that are either agreed to as fact at the hearing or by stipulation, or that, when disputed, are determined by the administrative law judge to be a fact over contentions to the contrary, and will include:

(A) A concise statement of facts supporting the findings as to each contested issue of fact;

(B) Ultimate facts required to support the Agency's order; and

(C) Credibility findings when credibility is of importance in the decision of the case, including the evidence relied on to reach this finding and the relevance of that evidence.

(c) Conclusions of law;

(d) An opinion explaining the rationale for the findings of fact and conclusions of law; and

(e) An order setting forth the administrative law judge's suggested determination, when the proposed decision is adverse to the party, of the amount owed by the party and any other relief within the authority of the commissioner.

(2) Proposed Orders will include a statement that written exceptions, if any, must be filed by participants within ten days of the date of issuance of the Proposed Order. Stat. Auth.: ORS 183, ORS 651.060(4)

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0160; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0380

Exceptions to Proposed Order

(1) Any participant may file exceptions to the Proposed Order. Exceptions must be specific and must be in writing. No oral argument is allowed on exceptions unless requested by the administrative law judge. Any new facts presented or issues raised in exceptions will not be considered by the commissioner in the Final Order.

(2) Exceptions filed by the Agency may include factual summaries, statements of policy, corrections, and prior Agency decisions, but may not include legal argument as defined in OAR 839-050-0110(4) unless the

Agency is represented by counsel.

(3) Exceptions filed by a party's authorized representative may include factual summaries, statements of policy, corrections, and prior Agency decisions, but may not include legal argument as defined in OAR 839-050-0110(4). A party that is a government agency, corporation, or unincorporated association, including a limited liability company, may include legal argument in its exceptions only if those exceptions are filed by counsel.

(4) Participants must file any exceptions within ten days of the date of issuance of the Proposed Order. Exceptions must be filed with the administrative law judge through the Hearings Unit. Participants may request an extension of time to file exceptions as provided in OAR 839-050-0050.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0165; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0400

Agency Policy

The administrative law judge may, at any time during a contested case proceeding and before the issuance of a Final Order, request that the Agency submit a written statement indicating the Agency's policy with regard to any statute or administrative rule at issue in the case. The administrative law judge will provide a copy of such request and Agency statement to the commissioner and all parties in the case and will include the statement in the record of the proceeding.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0175; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0410

Reopening the Contested Case Record

On the administrative law judge's own motion or on the motion of a participant, the administrative law judge will reopen the record when the administrative law judge determines additional evidence is necessary to fully and fairly adjudicate the case. A participant requesting that the record be reopened to offer additional evidence must show good cause for not having provided the evidence before the record closed.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0195; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0420

Final Order

(1) Except as provided in OAR 839-050-0220, 839-050-0430, or 839-050-0440, on the basis of the record considered as a whole, the commissioner will issue a Final Order in writing that includes findings of fact, conclusions of law, and an opinion and order. The Final Order will also contain a notice that the Final Order may be appealed to the Oregon Court of Appeals.

(2) The Final Order may include different findings, conclusions, or interpretations of law than the Proposed Order.

(3) The Final Order may provide for a different determination of liability, alternative means of enforcement, damages, or penalties, than the Proposed Order.

(4) A copy of the Final Order will be served on participants to a contested case in accordance with OAR 839-050-0030.

(5) Unless otherwise provided by law, a final order remains in effect during appeal, reconsideration or rehearing until stayed or changed.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0180; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 4-2002, f. 2-14-02, cert. ef. 2-15-02; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0430

Final Order by Default

(1) The administrator of the Wage and Hour Division may issue a Final Order by default when:

(a) A party is given an opportunity to request a hearing and file an answer within the time specified in the charging document and fails to do

ADMINISTRATIVE RULES

so; or

(b) A party withdraws the party's request for hearing.

(2) A Final Order by default may be issued only after a prima facie case in support of the charging document is made on the record. A prima facie case may be made from the Agency's file, if designated as the record in the charging document, provided that the charging document contained a statement advising the party that a failure to request a hearing would result in a Final Order.

(3) The participants will be served with a copy of the Final Order by default in accordance with OAR 839-050-0030.

(4) When a party has requested a hearing but either fails to attend the hearing or notifies the Agency that it will not attend, the administrative law judge will issue a Proposed Order pursuant to OAR 839-050-0330(2) and the commissioner will issue a Final Order pursuant to OAR 839-050-0420.

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Hist.: BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

839-050-0440

Expedited Hearings

(1) Expedited contested case hearings are governed by the procedures set forth in OAR 839, division 50, except to the extent those procedures are modified by this rule.

(2) The administrator of the Wage and Hour Division may request that any contested case proceeding arising out of that division be expedited. The request for an expedited hearing must be signed by the division administrator or the administrator's designee, must be included with the request for hearing submitted to the Hearings Unit, and must be served on the other participants.

(3) An administrative law judge will be assigned and will rule on the request for an expedited hearing within three business days of the date it is received by the Hearings Unit.

(4) If the administrative law judge grants the request for an expedited hearing, the notice of hearing will issue together with the order granting the request.

(5) The expedited hearing will be set for a date no earlier than 20 days after the date of issuance of the charging document, except that the hearing may be set for an earlier date when all participants agree and the administrative law judge assigned to the case is available.

(6) The commissioner delegates to the administrative law judge the authority to prepare and issue Final Orders in expedited hearings. No Proposed Order will be issued in an expedited hearing.

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Hist.: BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04

Adm. Order No.: BLI 16-2004

Filed with Sec. of State: 11-8-2004

Certified to be Effective: 11-10-04

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, Sagewind Manor, Project #2004-03*, dated May 20, 2004, for the period of May 24, 2004 through June 30, 2005.

(c) *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.

(d) *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.

(e) *Special Prevailing Wage Rate Determination for Residential Project, Headwaters Apartments, Project #2004-06*, dated October 14, 2004 for the period of October 15, 2004 through June 30, 2005.

(f) *The 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 was repealed on November 1, 2004.

(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; BLI 13-2004, f. & cert. ef. 10-19-04; BLI 14-2004, f. 10-29-04, cert. ef. 11-1-04; BLI 16-2004, f. 11-8-04, cert. ef. 11-10-04

Department of Agriculture Chapter 603

Adm. Order No.: DOA 24-2004

Filed with Sec. of State: 10-28-2004

Certified to be Effective: 10-28-04

Notice Publication Date: 8-1-04

Rules Amended: 603-022-0005, 603-022-0101, 603-022-0310, 603-022-0325, 603-022-0330, 603-022-0340, 603-022-0345, 603-022-0515, 603-022-0530, 603-022-0600, 603-022-0605

Rules Repealed: 603-022-0315, 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

Subject: 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.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-022-0005

Definitions

For the purpose of OAR 603-022-0010 to 603-022-0055:

(1) "Container" means any box, case, basket, carton, sack, bag, rack or other receptacle in which eggs are placed.

(2) "Fee" means the sum established by the Department as provided for by ORS 632.715 and prescribed by OAR 603-022-0010 for egg handlers first selling eggs in Oregon.

(3) "Oregon grading" means grading made on a lot of eggs at a plant where the eggs are graded and packed.

(4) "Permit Number" means an identification number issued by the Department or a USDA plant number issued to an egg handler to be placed on the container in which eggs are sold to the consumer.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 561 & ORS 632
Stats. Implemented: ORS 632.811
Hist.: AD 800(7-65), f. 8-3-65, ef. 1-1-66; AD 1079(3-67), f. & ef. 2-3-76; AD 10-1988, f. 12-19-88, cert. ef. 1-1-89; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0101

Eggs and Egg Products

As provided in ORS 632.811, the regulations governing this subject matter, adopted by the Food and Drug Administration of the United States Department of Health, Education, and Welfare and in effect as of April 1, 2001, are hereby adopted as the rules governing this subject matter in Oregon. Such federal regulations are contained in Title 21, Chapter 1, Part 160 of the Code of Federal Regulations and entitled "Eggs and Egg Products."

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

Stat. Auth.: ORS 561 & ORS 632
Stats. Implemented: ORS 632.811
Hist.: AD 1075(21-75), f. & ef. 12-31-75; AD 7-1982, f. & ef. 7-9-82; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0310

Definitions

(1) "Adulterated" means eggs of possible edible quality that fail to meet the requirements of an official Oregon grade or that have been contaminated by smoke, chemicals, or other foreign material which has seriously affected the character, appearance, or flavor of the eggs.

(2) Dirty. An individual egg that has an unbroken shell with adhering dirt or foreign material, prominent stains, or moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered.

(3) Check. An individual egg that has a broken shell or crack in the shell but with its shell membranes intact and its contents do not leak. A "check" is considered to be lower in quality than a "dirty."

(4) "Inedible Eggs" means eggs of the following descriptions are classed as inedible: Black rots, yellow rots, white rots, mixed rots (added eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, eggs containing embryo chicks (at or beyond the blood ring state), and any eggs that are adulterated as such term is defined pursuant to the federal Food, Drug, and Cosmetic Act, 21 U.S.C. 342.

(5) "Leaker" means an individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.

(6) "Loss" means an egg that is inedible, smashed, or broken so that contents are leaking, cooked, frozen, contaminated, or containing bloody whites, large blood spots, large unsightly meat spots, or other foreign material.

(7) Terms descriptive of the shell:

(a) Clean. A shell that is free from foreign material and from stains or discolorations that are readily visible. An egg may be considered clean if it has only very small specks, stains or cage marks, if such specks, stains or cage marks are not of sufficient number or intensity to detract from the generally clean appearance of the egg. Eggs that show traces of processing oil on the shell are considered clean unless otherwise soiled;

(b) Dirty. A shell that is unbroken and that has dirt or foreign material adhering to its surface, which has prominent stains, or has moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered;

(c) Practically normal (AA or A quality). A shell that approximates the usual shape and that is sound and is free from thin spots. Ridges and rough areas that do not materially effect the shape and strength of the shell are permitted;

(d) Abnormal (B quality). A shell that may be somewhat unusual or decidedly misshapen or faulty in soundness or strength or that may show pronounced ridges or thin spots.

(8) Terms descriptive of the air cell:

(a) Depth of air cell (air space between shell membranes, normally in the large end of the egg). The depth of the air cell is the distance from its top to its bottom when the egg is held air cell upward;

(b) Free air cell. An air cell that moves freely toward the uppermost point in the egg as the egg is rotated slowly;

(c) Bubbly air cell. A ruptured air cell resulting in one or more small separate air bubbles usually floating beneath the main air cell.

(9) Terms descriptive of the white:

(a) Clear. A white that is free from discolorations or from any foreign bodies floating in it. (Prominent chalazas should not be confused with foreign bodies such as spots or blood clots.)

(b) Firm (AA quality). A white that is sufficiently thick or viscous to prevent the yolk outline from being more than slightly defined or indistinctly indicated when the egg is twirled. With respect to a broken-out egg, a firm white has a Haugh unit value of 72 or higher when measured at a temperature between 45 degrees and 60 degrees F.

(c) Reasonably firm (A quality). A white that is somewhat less thick or viscous than a firm white. A reasonably firm white permits the yolk to approach the shell more closely which results in a fairly well defined yolk outline when the egg is twirled. With respect to a broken-out egg, a reasonably firm white has a Haugh unit value of 60 to 72 when measured at a temperature between 45 degrees and 60 degrees F.

(d) Weak and watery (B quality). A white that is weak, thin and generally lacking in viscosity. A weak and watery white permits the yolk to approach the shell closely, thus causing the yolk outline to appear plainly visible and dark when the egg is twirled. With respect to a broken-out egg, a weak and watery white has a Haugh unit value lower than 60 when measured at a temperature between 45 degrees and 60 degrees F.

(e) Blood spots or meat spots. Small blood spots or meat spots (aggregating not more than 1/8 inch in diameter) may be classified as B quality. If larger, or showing diffusion of blood into the white surrounding a blood spot, the egg shall be classified as Loss. Blood spots shall not be due to germ development. They may be on the yolk or in the white. Meat spots may be blood spots which have lost their characteristic red color or tissue from the reproductive organs.

(10) Terms descriptive of the yolk:

(a) Outline slightly defined (AA quality). A yolk outline that is indistinctly indicated and appears to blend into the surrounding white as the egg is twirled.

(b) Outline fairly well defined (A quality). A yolk outline that is discernible but not clearly outlined as the egg is twirled.

(c) Outline plainly visible (B quality). A yolk outline that is clearly visible as a dark shadow when the egg is twirled.

(d) Enlarged and flattened (B quality). A yolk in which the yolk membranes and tissues have weakened and/or moisture has been absorbed from the white to such an extent that the yolk appears definitely enlarged and flat.

(e) Practically free from defects (AA or A quality). A yolk that shows no germ development but may show other very slight defects on its surface.

(f) Serious defects (B quality). A yolk that shows well developed spots or areas and other serious defects, such as olive yolks, which do not render the egg inedible.

(g) Clearly visible germ development (B quality). A development of the germ spot on the yolk of a fertile egg that has progressed to a point where it is plainly visible as a definite circular area or spot with no blood in evidence.

(h) Blood due to germ development. Blood caused by development of the germ in a fertile egg to the point where it is visible as definite lines or as a blood ring. Such an egg is classified as inedible.

Stat. Auth.: ORS 561 & ORS 632

Stats. Implemented: ORS 632.811

Hist.: AD 977(10-72), f. 8-28-72, ef. 9-15-72; AD 1079(3-76), f. & ef. 2-3-76; AD 7-1982, f. & ef. 7-9-82; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0325

General

(1) These grades are applicable to edible shell eggs in "lot" quantities rather than on an "individual" egg basis. A lot may contain any quantity of two or more eggs. Reference in these standards to the term "case" means 30 dozen egg cases as used in commercial practices in Oregon. The size of the sample used to determine grade shall be on the basis of the requirements as set out in **Table 2**. For each additional 50 cases, or fraction thereof, in excess of 600 cases, one additional case shall be included in the sample. A minimum of 100 eggs per sample case shall be examined. For lots which consist of less than one case, 50 eggs shall be examined and, in instances when there are less than 50 eggs in a lot, all eggs shall be examined.

(2) Terms used in this section that are defined in the Oregon standards for quality of individual shell eggs have the same meaning in this section as in those standards.

(3) Aggregate tolerances are permitted within each consumer grade only as an allowance for variable efficiency and interpretation of graders, normal changes under favorable conditions during reasonable periods between grading and inspection, and reasonable variation of graders' interpretation.

(4) Substitution of higher qualities for the lower qualities specified is permitted.

ADMINISTRATIVE RULES

(5) The percentage requirements for grades as set forth in OAR 603-022-0330 and 603-022-0335 are applicable except that interior quality factors shall be determined in accordance with the definitions of OAR 603-022-0310(8), (9), and (10) when the lot is labeled.

[ED NOTE: Tables referenced in this rule are available from the Agency.]

Stat. Auth.: ORS 561.190 & ORS 632.811

Stats. Implemented: ORS 632.811

Hist.: AD 977(10-72), f. 8-2-72, ef. 9-15-72; AD 1079(3-76), f. & ef. 2-3-76; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0330

Oregon Consumer Grades for Shell Eggs

(1) At origin:

(a) Oregon Consumer Grade AA, or U.S. Consumer Grade AA (at origin), shall consist of eggs which are at least 87 percent AA quality. The maximum tolerance of 13 percent which may be below AA quality may consist of A or B quality in any combination, except that within the tolerance for B quality not more than one percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than 5 percent (seven percent for Jumbo size) Checks are permitted and not more than 0.50 percent Leakers, Dirties or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(b) Oregon Consumer Grade A, or U.S. Consumer Grade A (at origin), shall consist of eggs which are at least 87 percent A quality or better. Within the maximum tolerance of 13 percent which may be below A quality, not more than one percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than five percent (seven percent for Jumbo size) Checks are permitted and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(c) Oregon Consumer Grade B, or U.S. Consumer Grade B (at origin), shall consist of eggs which are at least 90 percent B quality or better, not more than ten percent may be Checks and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(2) At destination:

(a) Oregon Consumer Grade AA, or U.S. Consumer Grade AA (destination), shall consist of eggs which are at least 72 percent AA quality. The remaining tolerance of 28 percent shall consist of at least ten percent A quality and the remainder shall be B quality, except that within the tolerance for B quality not more than one percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than seven percent (nine percent for Jumbo size) Checks are permitted and not more than 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(b) Oregon Consumer Grade A, or U.S. Consumer Grade A, (destination) shall consist of eggs which are at least 82 percent A quality or better. Within the maximum tolerance of 18 percent which may be below A quality, not more than one percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than seven percent (nine percent for Jumbo size) Checks are permitted and not more than one percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(c) Oregon Consumer Grade B, or U.S. Consumer Grade B, (destination) shall consist of eggs which are at least 90 percent B quality or better, not more than ten percent may be Checks and not more than one percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(3) Additional tolerances:

(a) In lots of two or more cases:

(A) For Grade AA — No individual case may exceed ten percent less AA quality eggs than the minimum permitted for the lot average.

(B) For Grade A — No individual case may exceed ten percent less A quality eggs than the minimum permitted for the lot average.

(C) For Grade B — No individual case may exceed ten percent less B quality eggs than the minimum permitted for the lot average.

(b) For Grades AA, A, and B, no lot shall be rejected or downgraded due to the quality of a single egg except for Loss other than blood or meat spots.

Stat. Auth.: ORS 561 & ORS 632

Stats. Implemented: ORS 632.811

Hist.: AD 977(10-72), f. 8-2-72, ef. 9-15-72; AD 7-1982, f. & ef. 7-9-82; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0340

Weight Classes

(1) The weight classes for Oregon Consumer Grades for Shell Eggs shall be as indicated in **Table 5** and shall apply to all consumer grades.

(2) A lot average tolerance of 3.3 percent for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds five percent.

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

Stat. Auth.: ORS 561.190 & ORS 632.811

Stats. Implemented: ORS 632.811

Hist.: AD 977(10-72), f. 8-2-72, ef. 9-15-72; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0345

Labeling

Each egg container or subcontainer shall be plainly marked in bold-face type letters which are in contrast with background color with:

(1) The name and address of the producer, wholesaler, or retailer by or for whom the eggs were packed; Oregon plant number or USDA plant number, marking required by ORS 616.800 et seq., and the full, correct, and unabbreviated designation of the grade and size in accordance with the provisions of ORS Chapter 632 and OAR 603-022-0305 and 603-022-0340.

(2) Grade and size marking shall appear on the outside top face of containers holding less than 15 dozen in lettering of not less than 1/4 of an inch in height.

(3) Grade and size marking shall appear on the end of container holding 15 dozen or more eggs in lettering of not less than 1/2 of an inch in height.

(4) Description and type of marking required by ORS 616.800 et seq., shall be approved by and placed on file with the Department.

(5) All labeling requirements of this section, with exception of sections (2) and (3) of this rule relating to grade and size labeling, shall appear prominently on the container with the exception of the marking required by ORS 616.800 et seq., which may appear on the end or back of the container.

(6) There shall be no abbreviation of correct grade and size designation on signs required by ORS Chapter 632 to be on bulk containers of eggs being held or offered for sale.

Stat. Auth.: ORS 561.190 & ORS 632.811

Stats. Implemented: ORS 632.811

Hist.: AD 977(10-72), f. 8-2-72, ef. 9-15-72; AD 1079(3-76), f. & ef. 2-3-76; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0515

Holding or Cold Room

Graded and ungraded eggs and shall be stored in a manner to that they prevent cross-contamination and shall be kept clean, free of mold and objectionable odors, and properly lighted. The room shall be so constructed and equipped so that a temperature not to exceed 45 degrees F. can be maintained.

Stat. Auth.: ORS 561.190 & ORS 632.811

Stats. Implemented: ORS 632.811

Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66; AD 1079(3-76), f. & ef. 2-3-76; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0530

Sanitizing Cleaned Eggs

All washed eggs shall be spray-rinsed with water containing an approved type sanitizing agent.

Stat. Auth.: ORS 561.190 & ORS 632.811

Stats. Implemented: ORS 632.811

Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0600

Definitions

As used in OAR 603-022-0600 through 603-022-0710.

(1) "Department" means the State Department of Agriculture.

(2) "Egg Meats" or "Egg Products" means the white, yolk, or any part of eggs, in liquid, frozen, dried, or any other form, used, intended, or held for use in the preparation of, or to be a part of or mixed with, food or food products for human consumption.

(3) "Eggs" means eggs in the shell from chickens, turkeys, ducks, geese, or any other specie of fowl.

(4) "Egg Products Plant" or "Egg Breaking Plant" means any place or establishment where eggs or egg products are broken, processed, pasteurized, packaged, or prepared for distribution in liquid, frozen, or dried condition.

ADMINISTRATIVE RULES

(5) The term "Pasteurization," "Pasteurized," or similar terms denoting pasteurization shall be taken to refer to heating every particle of egg or egg products to such temperature and holding at such temperature for a period of time sufficient for the purpose of rendering the eggs or egg products free of salmonella or other pathogenic micro-organisms in properly operated equipment as shall be approved by the Department; provided, that nothing contained in this definition shall be construed as disbaring any other process which has been demonstrated to be equally efficient and is approved by the Department.

(6) "Sanitize" or "Sanitizing" means to subject to a germicidal agent or bactericidal treatment process approved by the Department.

(7) "Stabilization" means the subjection of any egg product to a de-sugaring process.

Stat. Auth.: ORS 561.190 & ORS 632.811

Stats. Implemented: ORS 632.811

Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0605

Plant Requirements

The sanitation standards for egg candling and grading facilities and establishments shall be those established in OAR 603-025-0020 and by the USDA Egg Products Inspection Act, 21 U.S.C. 1031, *et seq.*

Stat. Auth.: ORS 561.190 & ORS 632.811

Stats. Implemented: ORS 632.811

Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66; DOA 24-2004, f. & cert. ef. 10-28-04

Adm. Order No.: DOA 25-2004

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Rules Adopted: 603-011-0369, 603-011-0371, 603-011-0373, 603-011-0374, 603-011-0377, 603-011-0378, 603-011-0379

Rules Amended: 603-011-0367

Subject: These proposed rules allow Oregon to be compliant with a national agenda to eradicate scrapie from sheep flocks in the United States. They are consistent and compliant with that plan. They also clarify for sheep producers what happens when a Scrapie flock is identified.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-011-0367

Definitions

For purposes of OAR 603, division 11:

(1) "Animal(s)" means domestic or captive sheep and/or goat(s).

(2) "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture (USDA).

(3) "Director" means the Director of the Oregon Department of Agriculture, or a duly authorized representative.

(4) "Department" means the Oregon Department of Agriculture.

(5) "Exposed Flock" means a flock which has received female animals from an infected or source flock or that contains or contained a suspect female animal.

(6) "Flock" means a group of two or more sheep or goats which are kept, fed, and herded together as a management unit. The term "flock" is interchangeable with the term "herd" and applies to all categories and breeds of sheep and goats.

(7) "Flock Management Plan" means a written scrapie flock management agreement which is signed by the flock owner and a Department or APHIS representative

(8) "Infected Flock" means a flock in which there has been at least one animal with laboratory confirmed diagnosis of scrapie, including "source" flocks.

(9) "Official Individual Identification" means the unique identification of individual animals with a device determined to be appropriate by the Department and the USDA. Such identification may include, but is not limited to, official identification tags, tattoos, and electronic devices.

(10) "Quarantine" means a movement restriction imposed by the Department under authority of Oregon Revised Statutes (ORS) Chapters 561 and 596.

(11) "Scrapie" means a transmissible spongiform encephalopathy of sheep and goats.

(12) "Source Flock" means a flock in which a State or APHIS representative has determined that at least one animal was born that was diagnosed as scrapie positive at an age of 72 months or less or in which a scrapie-positive animal has resided throughout its life. The determination

that an animal was born in a flock must be based either on the presence of official identification on the animal traceable to the flock, the presence of other identification on the animal that is listed on the bill of sale, or other evidence, such as registry records, to show that a scrapie-positive animal originated from the flock combined with the absence of records indicating that the animal was purchased and added to the flock. If DNA from the animal was collected when the animal resided in the flock of birth by an accredited veterinarian and stored at an approved genotyping laboratory, or if DNA collection and storage is required for breed registration and the breed registration has appropriate safeguards in place to ensure the integrity of the banking process, the owner may request verification of the animal's identity based on DNA comparison if adequate records and identification have been maintained by the owner and the repository to show that the archived DNA is that of the animal that has been traced to the flock. A flock will no longer be a source flock after it has completed the requirements of a flock plan.

(13) "USDA" means the United States Department of Agriculture.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412

Stats. Implemented: ORS 596.392

Hist.: AD 5-1993(Temp), f. & cert. ef. 5-26-93; AD 13-1993, f. & cert. ef. 10-6-93; DOA 25-2004, f. & cert. ef. 11-8-04

603-011-0369

Scrapie Program Standards: Adoption of References

The USDA Scrapie Control and Flock Certification Program Standards found at 9 CFR Parts 54 (Control of Scrapie) and 79 (Scrapie in Sheep and Goats) are adopted by reference as the basic standards for the scrapie control and eradication program in Oregon.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412

Stats. Implemented: ORS 596.392

Hist.: DOA 25-2004, f. & cert. ef. 11-8-04

603-011-0371

Identification of Sheep and Goats

All animals of any age leaving the flock of origin which are not in slaughter channels and all animals over 18 months of age in slaughter channels must have official premises identification in accordance with 9 CFR Part 79 prior to leaving the farm of origin for intrastate or interstate movement for any purpose. All animals for exhibition must bear official individual identification.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412

Stats. Implemented: ORS 596.392

Hist.: DOA 25-2004, f. & cert. ef. 11-8-04

603-011-0373

Importation of Scrapie Infected, Exposed, Suspect, or High Risk Animals

As defined in 9 CFR Parts 54 and 79, and excepting animals determined by genetic testing to be resistant to scrapie infection, animals determined to be genetically susceptible and infected, exposed, suspect, or high risk, or genetically susceptible animals from scrapie infected, source, trace, or exposed flocks shall not be imported into Oregon.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412

Stats. Implemented: ORS 596.392

Hist.: DOA 25-2004, f. & cert. ef. 11-8-04

603-011-0374

Reporting Scrapie Positive Tests

(1) Suspected or confirmed cases of scrapie must be reported by telephone or fax to the Department by an owner, manager, or veterinarian within one (1) working day of determination of a positive scrapie test in an animal.

(2) It is unlawful for any owner or manager of sheep or goats to attempt to conceal or fail to report the existence of suspected or confirmed scrapie in such animals under control of that person.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412

Stats. Implemented: ORS 596.392

Hist.: DOA 25-2004, f. & cert. ef. 11-8-04

603-011-0377

Condemnation and Destruction of Scrapie Infected or Exposed Animals

(1) Individual animals or flocks of animals determined by the Department or representatives of USDA/APHIS to be infected with or exposed to scrapie may be condemned and destroyed by order of the Director under ORS 596. Disposal of such condemned and destroyed animals shall be under direction of the Department.

(2) Owners of animals destroyed by order of the Department may be eligible for indemnification as determined under authority of ORS 596.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412

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Stats. Implemented: ORS 596.392
Hist.: DOA 25-2004, f. & cert. ef. 11-8-04

603-011-0378

Management of Exposed or Infected Flocks

These procedures shall be followed for managing flocks determined to be infected with scrapie or which have received animals from a flock determined to be infected:

(1) All animals in the flock shall be quarantined by the Department under ORS 561 or 596 subject to disease status evaluation to determine risk status of the animals involved.

(2) After a disease status evaluation determines risk levels of specific animals in an infected flock or animals received from a flock determined to be infected, a Flock Management Plan shall be written in accordance with 9 CFR Part 54 and signed by the flock owner and the Director or representative. The Department may require destruction of high risk, exposed, and infected animals under ORS 596.

(3) The quarantine shall be removed after the department approved flock management plan has been implemented and completed.

(4) Animals from an exposed or infected flock may not be exhibited at public gatherings in Oregon until completion of the flock management plan.

(5) Animals from an exposed or infected flock may not be sold for breeding purposes in Oregon until the flock owner has completed a flock management plan consistent with 9 CFR Part 54.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412
Stats. Implemented: ORS 596.392
Hist.: DOA 25-2004, f. & cert. ef. 11-8-04

603-011-0379

Cleaning and Disinfection

The Department may require any premises, facility or equipment used in housing, handling, feeding, or transporting any animals infected with or exposed to scrapie to be cleaned and disinfected under supervision of Department appointed personnel. The owner of the premises, facilities or equipment shall be responsible for the costs of cleaning and disinfection.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412
Stats. Implemented: ORS 596.392
Hist.: DOA 25-2004, f. & cert. ef. 11-8-04

Department of Consumer and Business Services, Director's Office Chapter 440

Adm. Order No.: DO 1-2004

Filed with Sec. of State: 10-21-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 9-1-04

Rules Amended: 440-045-0020, 440-045-0025

Subject: OAR Chapter 440-045-0020, 440-045-0025: Pursuant to ORS 656.612, the Director shall adopt by rule the assessment to be imposed and collected from insurers, self-insured employers and self-insured employer groups, based on workers' compensation direct earned premium, in an amount sufficient to meet the expenses of the department in carrying out its duties under ORS Chapter 656, ORS Chapter 654 and the Insurance Code. The assessment rate is established annually. These rules establish the assessment rate for calendar year 2005.

Rules Coordinator: Myrna Curzon—(503) 947-7866

440-045-0020

Assessment Rate

The assessment to be levied against insurers, self-insured employers and self-insured employer groups for Calendar Year 2005 shall be 6.8 percent of direct earned premium and the direct earned premium self-insured employers and self-insured employer groups would have paid had they been insured employers.

Stat. Auth.: ORS 705.135 & ORS 656.612
Stats. Implemented: ORS 656.612 & ORS 656.614
Hist.: DO 2-1999, f. 10-1-99, cert. ef. 1-1-00; DO 1-2000, f. 10-11-00; DO 3-2001, f. 10-22-01, cert. ef. 1-1-02; DO 4-2002, f. 10-17-02 cert. ef. 1-1-03; DO 3-2003, f. 10-22-03, cert. ef. 1-1-04; DO 1-2004 f. 10-21-04 cert. ef. 1-1-05

440-045-0025

Adjustment Reserve Rate

In addition to the assessments established in OAR 440-045-0020, self-insured employer groups and self insured employers for the Calendar

Year 2005 shall be assessed an additional 0.2 percent to fund the Self-Insured Employer Group Adjustment Reserve and the Self-Insured Employer Adjustment Reserve.

Stat. Auth.: ORS 705.135 & ORS 656.612
Stats. Implemented: ORS 656.612 & ORS 656.614
Hist.: DO 2-1999, f. 10-1-99, cert. ef. 1-1-00; DO 1-2000, f. 10-11-00, cert. ef. 1-1-01; DO 3-2001, f. 10-22-01, cert. ef. 1-1-02; DO 4-2002, f. 10-17-02 cert. ef. 1-1-03; DO 3-2003, f. 10-22-03, cert. ef. 1-1-04; DO 1-2004 f. 10-21-04 cert. ef. 1-1-05

Adm. Order No.: DO 2-2004

Filed with Sec. of State: 11-8-2004

Certified to be Effective: 11-8-04

Notice Publication Date: 9-1-04

Rules Amended: 440-001-0005

Subject: OAR 440-001-0005: Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule. The amendment to OAR 440-001-0005 adopts the current version of the Attorney General Model Rules of Procedure, specifies the rule numbers adopted, and simplifies the language used to adopt the model rules.

Rules Coordinator: Myrna Curzon—(503) 947-7866

440-001-0005

Model Rules of Procedure

The Model Rules of Procedure, OAR 137-001-0005 through 137-001-0080, in effect on November 8, 2004, as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act are adopted as the rules of procedure for rulemaking actions of the Department of Consumer and Business Services except the Workers' Compensation Board and except as otherwise adopted by an administrative division or staff office of the Department created under ORS 705.115.

[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 Consumer and Business Services.]

Stat. Auth.: ORS 183.341 & ORS 705.135
Stats. Implemented: ORS 183.341
Hist.: IF 6-1989, f. & cert. ef. 9-1-89; IF 1-1992, f. & cert. ef. 2-13-92; DCBS 1-1994, f. & cert. ef. 3-23-94; DO 4-2002, f. 10-17-02 cert. ef. 1-1-03; DO 2-2004, f. & cert. ef. 11-8-04

Department of Consumer and Business Services, Division of Finance and Corporate Securities Chapter 441

Adm. Order No.: FCS 4-2004

Filed with Sec. of State: 11-1-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 10-1-04

Rules Amended: 441-730-0030

Subject: The amendment increases the annual license fee from \$375 to \$520.

Rules Coordinator: Berri Leslie—(503) 947-7478

441-730-0030

Fees, Charges Licensees Pay the Director

(1) Effective January 1, 2005, the annual license fee under ORS 725.185 is \$520, and is due and payable on March 1 of each calendar year.

(2) A licensee who surrenders a license before the March 1 payment date must pay a fee of \$55 as a limited annual license fee.

(3) The rate of charge payable by a licensee is \$60 an hour per person payable by the licensee for the Director and each examiner and other division employee used in an examination conducted under ORS 725.312 and for extra services provided a licensee under ORS 725.185(2).

(4) Notwithstanding the rate of charge fixed by section (3) of this rule:

(a) If an examiner from the division or the Director is required to travel out of state in conducting the examination or providing the extra services, the rate of charge payable by the licensee is \$60 an hour per person, plus actual cost of travel; actual travel costs include air fare, lodging, food, car usage out of state, mileage to the Oregon airport and return, and travel time beginning from the departure time and ending at the departure time at the destination city;

(b) If the extra services or examination is performed by a consultant hired by contract for the particular service or examination, the charge payable by the licensee is the actual cost to the division of the contract consultant.

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(5) As used in this rule, "extra services" means any attention other than an examination given under ORS 725.310.

(6) In addition to the charges fixed by sections (3) and (4) of this rule, the Director will collect from a licensee any additional costs directly attributable to extra services given the licensee under ORS 725.185 or a special examination given the licensee under ORS 725.310.

Stat. Auth.: ORS 725.185

Stats. Implemented: ORS 725.185

Hist.: FID 8-1985, f. & ef. 12-31-85; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-075-0015; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; FCS 1-2001, f. 1-22-01, cert. ef. 2-1-01; FCS 4-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 4-2004, f. 11-1-04, cert. ef. 1-1-05

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

Adm. Order No.: WCD 9-2004

Filed with Sec. of State: 10-26-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 8-1-04, 9-1-04

Rules Adopted: 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

Rules Amended: 436-030-0002, 436-030-0003, 436-030-0005, 436-030-0007, 436-030-0009, 436-030-0015, 436-030-0020, 436-030-0023, 436-030-0034, 436-030-0035, 436-030-0036, 436-030-0055, 436-030-0066, 436-030-0115, 436-030-0135, 436-030-0145, 436-030-0155, 436-030-0165, 436-030-0175, 436-030-0185, 436-030-0580, 436-035-0002, 436-035-0003, 436-035-0005, 436-035-0007, 436-035-0020, 436-035-0030, 436-035-0040, 436-035-0050, 436-035-0060, 436-035-0070, 436-035-0075, 436-035-0080, 436-035-0090, 436-035-0100, 436-035-0110, 436-035-0130, 436-035-0140, 436-035-0160, 436-035-0190, 436-035-0220, 436-035-0230, 436-035-0250, 436-035-0260, 436-035-0330, 436-035-0340, 436-035-0350, 436-035-0375, 436-035-0380, 436-035-0385, 436-035-0390, 436-035-0395, 436-035-0400, 436-035-0410, 436-035-0420, 436-035-0430, 436-035-0440, 436-035-0450, 436-035-0500, 436-060-0003, 436-060-0005, 436-060-0008, 436-060-0009, 436-060-0010, 436-060-0015, 436-060-0017, 436-060-0018, 436-060-0019, 436-060-0020, 436-060-0025, 436-060-0030, 436-060-0035, 436-060-0040, 436-060-0045, 436-060-0055, 436-060-0060, 436-060-0095, 436-060-0105, 436-060-0135, 436-060-0140, 436-060-0147, 436-060-0150, 436-060-0155, 436-060-0170, 436-060-0180, 436-060-0190, 436-060-0195, 436-060-0200, 436-060-0500

Rules Repealed: 436-030-0010, 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

Subject: These rules have been amended 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 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 cannot return to 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.

- Require insurers to withhold payment of "work disability" if a worker becomes enrolled and actively engaged in training under ORS 656.340 and OAR 436-120.

In addition, these 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 medical service 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 medical service 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.
- 436-060-0009(7) Require that requests to inspect or obtain copies of workers' compensation claim records include the reason for requesting the records;
- 436-060-0015(8) Require that prior to claim closure, the insurer send the worker a letter documenting the wage upon which benefits were based and work disability will be determined, if applicable, when the claim is closed. The letter must also explain how the worker can appeal the insurer's wage calculation under OAR 436-060-0025 if the worker disagrees with the wage;
- 436-060-0017(10) Provide that if the Workers' Compensation Division is investigating rule violation complaints about release of requested claim documents, and an insurer provides an inadequate response to the division's request (e.g. failing to answer specific questions or provide requested documents), a civil penalty may be assessed against the insurer; this section formerly addressed only the timeliness of the response;
- 436-060-0018 Clarify procedures for the insurer's review of disabling/non-disabling status decisions and related appeal rights;
- 436-060-0035(4) Provide that the insurer will calculate time loss due based on one job, if it hasn't received information about other employment in time for the payment to be made. If the worker sends the information later, the insurer must recalculate what is due and pay

ADMINISTRATIVE RULES

it. However, the insurer is not then subject to penalties for late payment of supplemental disability;

- 436-060-0035(9) Provide that there is no three-day waiting period applicable to supplemental disability benefits;
- 436-060-0035(10) Provide that the worker's scheduled days off for the job at which the injury occurred are used to calculate and pay supplemental disability;
- 436-060-0035(23)-(24) Provide that in third party recoveries, supplemental disability paid from the Workers' Benefit Fund is considered part of the department's lien;
- 436-060-0135(6) Specify certain types of information that must be submitted by an insurer requesting suspension of benefits for failure to attend an insurer medical examination;
- 436-060-0140(10) Provide that if the attending physician did not agree with an insurer medical examination report, a related denial notice must include the division's Web site address and toll free Infoline number for the worker's use in obtaining a brochure about Worker Requested Medical Examinations;
- 436-060-0147(6)-(7) Provide that the director may give the worker a list of appropriate physicians (for a Worker Requested Medical Examination); the worker may eliminate one physician's name from the list; and
- 436-060-0155(8) Provide that if the penalty order is appealed and later upheld, the penalty under this rule will be due within 14 days of the date the order upholding the penalty becomes final.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us. Rules are available on the internet: <http://www.oregonwcd.org/policy/rules/rules.html#permrules>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-030-0002

Purpose of Rules

The purpose of these rules is to provide standards, conditions, procedures, and reporting requirements for:

- (1) Requests for closure by the worker;
- (2) Claim closure under ORS 656.268(1);
- (3) Determining medically stationary status;
- (4) Determining temporary disability benefits;
- (5) Awards of permanent partial disability;
- (6) Review and determination of the disabling or nondisabling status of a claim;
- (7) Determining permanent total disability awards;
- (8) Review for reduction of permanent total disability awards;
- (9) Review of prior permanent partial disability awards consistent with OAR 436-030-0003; and
- (10) Reconsideration of notices of closure.

Stat. Auth.: ORS 656.268, 656.726, 1995 OL Ch. 332 & 1999 OL Ch. 313
Stats. Implemented: ORS 656.206, 656.210, 656.212, 656.262, & 1999 OL 313
Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0002, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0003

Applicability of Rules

(1) Except as provided in section (3) of this rule, these rules apply to all accepted claims for workers' compensation benefits and all requests for reconsideration received by the department on or after the effective date of these rules.

(2) All orders issued by the division to carry out the statute and these rules are considered an order of the director.

(3) These rules take the place of the rules adopted on February 29, 2004, by Workers' Compensation Division Administrative Order 04-052, and carry out ORS 656.005, 656.214, 656.262, 656.268, 656.273, 656.277, 656.278, and 656.325.

(a) For claims in which the worker became medically stationary prior to July 2, 1990 OAR 436-030-0020, 436-030-0030, and 436-030-0050 as adopted by WCD Administrative Order 13-1987 effective January 1, 1988 will apply.

(b) OAR 436-030-0055(3)(b), (3)(d) and (4)(a) apply to all claims with dates of injury on or after January 1, 2002.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Stats. Implemented: ORS 656.206, 656.210, 656.212, 656.262, 656.268, 656.277, 656.325, 656.726, OL Ch. 332 1995 & Ch. 313 1999, 1999 OL 313, 349, 350, 377, 865, OL 2001
Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0003, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1991(Temp), f. 8-20-91, cert. ef. 9-1-91; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 12-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 6-29-01; Administrative correction 11-20-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 4-2002, f. 4-5-02, cert. ef. 4-8-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0005

Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions given in the Workers' Compensation Law and as follows:

(1) "Administrator" means the administrator of the Workers' Compensation Division, Department of Consumer and Business Services, or the administrator's delegate for the matter.

(2) "Authorized Nurse Practitioner" means a nurse practitioner authorized to provide compensable medical services under ORS 656.245 and OAR 436-010.

(3) "Day(s)" means calendar day(s) unless otherwise specified (e.g., "working day(s)").

(4) "Director" means the director of the Department of Consumer and Business Services, or the director's delegate for the matter.

(5) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(6) "Insurer" means the State Accident Insurance Fund, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon, a self-insured employer, or a self-insured employer group.

(7) "Mailed or Mailing Date," for the purposes of determining timeliness under these rules, means the date a document is postmarked. Requests submitted by electronic transmission (by facsimile or "fax") will be considered mailed as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests will be considered mailed as of the date stamped or punched in by the Workers' Compensation Division. Phone or in-person requests, where allowed under these rules, will be considered mailed as of the date of the request.

(8) "Notice of Closure" means a notice to the worker issued by the insurer to

(a) Close an accepted disabling claim;

(b) Correct, rescind, or rescind and reissue a Notice of Closure previously issued; or

(c) Reduce permanent total disability to permanent partial disability.

(9) "Notice of Refusal to Reclassify" means the insurer's written response, to a worker's request, which notifies the worker of the insurer's decision regarding the nondisabling status of a claim.

(10) "Reconsideration" means review by the director of an insurer's Notice of Closure.

(11) "Statutory closure date" means the date the claim satisfies the criteria for closure under ORS 656.268(1)(b) and (c).

(12) "Statutory appeal period" means the time frame for appealing a Notice of Closure or Order on Reconsideration.

(13) "Work disability", for purposes of determining permanent disability, means the separate factoring of impairment as modified by age, education, and adaptability to perform the job at which the worker was injured.

(14) "Worksheet" means a summary of facts used to derive the awards stated in the Notice of Closure.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Stats. Implemented: ORS 656.005, 656.268, 656.726 & OL Ch. 332 1995 & Ch. 313 1999
Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), 12-30-81, ef. 1-1-82; Renumbered from 436-065-0004, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

ADMINISTRATIVE RULES

436-030-0007

Administrative Review

(1) The following matters are subject to dispute resolution before the director:

(a) Notices of Closure issued by insurers are appealed to the director and processed in accordance with the reconsideration procedures described in OAR 436-030-0115 through 436-030-0185.

(b) The director may abate, withdraw, and/or amend the Order on Reconsideration until the Order is final by operation of law.

(c) Notices of Refusal to Reclassify issued by insurers are appealable by the worker to the director under ORS 656.273 and 656.277 and OAR 436-060-0018.

(2) The following matters are brought before the Hearings Division of the Workers' Compensation Board:

(a) Director's Review orders and Orders on Reconsideration issued under OAR 436-060-0018 and these rules are appealable to the Hearings Division of the Workers' Compensation Board within the timeframes in OAR 436-060-0018 and 436-030-0145, respectively.

(b) A party may request a hearing before the Hearings Division of the Workers' Compensation Board on any other action taken under these rules where a worker's right to compensation or the amount thereof is directly an issue under ORS Chapter 656.

(3) Contested Case Hearings of Sanctions and Civil Penalties: Under ORS 656.740, any party aggrieved by a proposed order or proposed assessment of a civil penalty issued by the director under ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by the Hearings Division as follows:

(a) The party must send the request for hearing in writing to the director within 60 days after the mailing date of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The Workers' Compensation Division will forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(c) An Administrative Law Judge from the Hearings Division, acting on behalf of the director, will conduct the hearing in accordance with ORS 656.740 and Chapter 183.

(4) Director's Administrative Review of other actions: Except as covered under sections (1) through (3) of this rule, any party seeking an action or decision by the director or aggrieved by an action taken by any other party under these rules, may request administrative review by the director as follows:

(a) The party must send the request in writing to the director within 90 days of the disputed action and must specify the grounds upon which the action is disputed.

(b) The director may require and allow such evidence as is deemed appropriate to complete the review.

(c) A director's order will be issued and will specify if the order is final or if it may be appealed.

(d) The director may, unless otherwise obligated by statute, at the director's discretion, waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999, (89, ch. 170, OL 2003)

Stats. Implemented: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999, 350, OL 2001

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0009

Appeals of Notices of Closure

If the worker or insurer disagrees with a Notice of Closure and the worker was determined medically stationary after July 1, 1990, or the worker is not medically stationary and the claim is closed under ORS 656.268(1)(b) or (c), the worker or insurer must first request a reconsideration by the director under these rules. If the worker was determined medically stationary on or before July 1, 1990, WCD Admin. Order 13-1987 rules apply.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 & 1999 OL Ch. 313, 429, OL 2003

Stats. Implemented: ORS 656.268, 656.726, OL Ch. 332 & 1999 OL Ch. 313, 429, OL 2003

Hist.: WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; Renumbered from 436-030-0020(3); WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0015

Insurer Responsibility

(1) When an insurer issues a Notice of Closure (Form 440-1644, 1644c, 1644r), the insurer is responsible for:

(a) Providing the director, the parties, and the worker's attorney if the worker is represented, a copy of the Notice of Closure, a copy of the worksheet (Form 440-2807) upon which the Notice is based, a completed "Insurer Notice of Closure Summary" (Form 440-1503) and an Updated Notice of Acceptance at Closure that specifies which conditions are compensable, as prescribed in section (2) of this rule;

(b) Maintaining a copy of the worksheet and records upon which the Notice of Closure is based in its claim file for audit purposes under OAR 436-050; and

(c) Issuing the Updated Notice of Acceptance at Closure on the same date as the Notice of Closure.

(d) The Updated Notice of Acceptance at Closure must contain the following title, information, and language:

(A) Title: "Updated Notice of Acceptance at Closure";

(B) Information: A list of all compensable conditions that have been accepted, even if a condition was denied, ordered accepted by litigation, and is under appeal. Any conditions under appeal and those which were the basis for this claim opening must be specifically identified;

(C) Language, in bold print:

"Notice to Worker: This notice restates and includes all prior acceptances. The conditions that were the basis of this claim opening are the only conditions considered at the time of claim closure. The insurer or self-insured employer is not required to pay any disability compensation for any condition specifically identified as under appeal, unless and until the condition is found to be compensable after all litigation is complete. Appeal of any denied conditions or objections to this notice will not delay claim closure. Any condition found compensable after the Notice of Closure is issued will require the insurer to reopen the claim for processing of that condition. If you believe a condition has been incorrectly omitted from this notice, or this notice is otherwise deficient, you must communicate the specific objection to the insurer in writing."

(e) The insurer or self-insured employer is not required to pay any disability compensation for any condition under appeal and specifically identified as such, unless and until the condition is found to be compensable after all litigation is complete.

(f) In the event an omission or error requires a corrected Updated Notice of Acceptance at Closure, the word "CORRECTED" must appear in capital letters adjacent to the word "Updated".

(g) In the event that the "Initial Notice of Acceptance" is issued at the same time as the "Updated Notice of Acceptance at Closure," both titles must appear near the top of the document.

(2) Copies of Notices of Refusal to Close must be mailed to the director and the parties, and to the worker's attorney, if the worker is represented.

(3) In claims with a date of injury on or after January 1, 2005 where the worker has not returned to regular work and ORS 656.726(4)(f) does not apply, the insurer must consider:

(a) The worker's age at the time the notice is issued;

(b) Adaptability to return to employment;

(c) The worker's level of education;

(d) The worker's work history, including an accurate description of the physical requirements of the worker's job held at the time of injury, for the period from five years before the date of injury to the mailing date of the notice of closure with dates or period of time spent at each position, tasks performed or level of specific vocational preparation (SVP), and physical requirements.

(4) In claims where the date of injury is before January 1, 2005, the worker has not returned or been released to regular work, ORS 656.726(4)(f) does not apply, and the claim involves injury to, or disease of, unscheduled body parts, areas, or systems, the insurer must consider:

(a) The worker's age at time the notice is issued;

(b) Adaptability to return to employment;

(c) The worker's level of education;

(d) The worker's work history, including an accurate description of the physical requirements of the worker's job held at the time of injury, for the period from five years before the date of injury to the mailing date of the notice of closure with dates or period of time spent at each position, tasks performed or level of specific vocational preparation (SVP), and physical requirements.

(5) The insurer must consider any other records or information pertinent to claim determination prior to issuing a notice of closure.

(6) The insurer must notify the worker and the worker's attorney, if the worker is represented, in writing, when the insurer receives information that the worker's claim qualifies for closure under these rules.

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(a) The insurer must send the written notice within three working days from the date the insurer receives the information, unless the claim has already been closed.

(b) The notice must advise the worker of his or her impending claim closure and that any time loss disability payments will end soon.

(7) The insurer must, within 14 days of closing the claim, provide the worker's attorney the same documents relied upon for claim closure.

(8) The insurer must not issue a Notice of Closure on an accepted nondisabling claim. Notices of Closure issued by the insurer in violation of this rule are void and without legal effect. Medically stationary status in nondisabling claims may be documented by the attending physician's statement of medically stationary status.

(9) When a condition is accepted after a closure and the claim has been reopened under ORS 656.262, the insurer must issue a Notice of Closure, considering only the newly accepted condition.

(10) Denials issued under ORS 656.262(7)(b), must clearly identify the phrase "major contributing cause" in the text of the denial.

(11) When a claim is closed where a designation of paying agent order (ORS 656.307) has been issued and the responsibility issue is not final by operation of law, the insurer processing the claim at the time of closure must send copies of the closure notice to the worker, the worker's attorney if the worker is represented, the director, and all parties involved in the responsibility issue.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Stats. Implemented: ORS 656.268, 656.319, 656.726, 656.745, OL Ch. 332 1995 & Ch. 313 1999
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0020

Requirements for Claim Closure

(1) Provided the worker is not enrolled and actively engaged in training, the insurer must issue a Notice of Closure on an accepted disabling claim within 14 days when:

(a) Medical information establishes there is sufficient information to determine the extent of permanent disability under ORS 656.245(2)(b)(B), and indicates the worker's compensable condition is medically stationary;

(b) The accepted injury/condition is no longer the major contributing cause of the worker's combined or consequential condition(s), a major contributing cause denial has been issued, and there is sufficient information to determine the extent of permanent disability;

(c) The worker fails to seek medical treatment for 30 days for reasons within the worker's control and the worker has been notified of pending actions in accordance with these rules; or

(d) The worker fails to attend a mandatory closing examination for reasons within the worker's control and the worker has been notified of pending action(s) in accordance with these rules.

(2) For purposes of determining the extent of disability, "sufficient information" requires the following:

(a) An authorized nurse practitioner's or attending physician's written statement that clearly indicates there is no permanent impairment, residuals, or limitations attributable to the accepted condition(s), and there is no reasonable expectation, based on evidence in the record, of loss of use or function, changes in the worker's physical abilities, or permanent impairment attributable to the accepted condition(s). If the physician or nurse practitioner indicates there is no impairment, but the record reveals otherwise, a closing examination and reports specified under (b) of this section are required; or

(b) A closing medical examination and report when there is a reasonable expectation of loss of use or function, changes in the worker's physical abilities, or permanent impairment attributable to the accepted condition(s) based on evidence in the record or the physician's opinion. The closing medical examination report must describe in detail all measurements and findings regarding any permanent impairment, residuals, or limitations attributable to the accepted condition(s) under OAR 436-010-0280 and 436-035; and, if there is not clear and convincing evidence that the worker has returned to regular work at the job held at the time of injury and ORS 656.726(4)(f) does not apply, all of the following:

(A) An accurate description of the physical requirements of the worker's job held at the time of injury, which has been provided by certified mail to the worker and the worker's legal representative, if any, either before closing the claim or at the time the claim is closed;

(B) The worker's wage established consistent with OAR 436-060;

(C) The worker's date of birth;

(D) The worker's work history for the period beginning five years before the date of

injury to the mailing date of the Notice of Closure, including tasks performed or level of SVP, and physical demands; and

(E) The worker's level of formal education .

(3) When determining disability and issuing the Notice of Closure, the insurer must apply all statutes and rules consistent with their provisions, particularly as they relate to major contributing cause denials, worker's failure to seek treatment, worker's failure to attend a mandatory examination, medically stationary status, temporary disability, permanent partial and total disability, review of permanent partial and total disability.

(4) When issuing a Notice of Closure, the insurer must prepare a summary worksheet, "Notice of Closure Worksheet", Form 440-2807 (Form 2807), as described by bulletin of the director.

(5) The "Notice of Closure", Form 440-1644 (Form 1644), is effective the date it is mailed to the worker and to the worker's attorney if the worker is represented, regardless of the date on the Notice itself.

(6) The notice must be in the form and format prescribed by the director in these rules and include only the following:

(a) The worker's name, address, and claim identification information;

(b) The appropriate dollar value of any individual scheduled and/or unscheduled permanent disability based on the value per degree for injuries occurring before January 1, 2005 or, for injuries occurring on or after January 1, 2005, the appropriate dollar value of any "whole person" permanent disability, including impairment and work disability as determined appropriate under OAR 436-035;

(c) The body part(s) awarded disability, coded to the table of body part codes as prescribed by the director;

(d) The percentage of loss of the specific body part(s), including either the number of degrees that loss represents as appropriate for injuries occurring before January 1, 2005, or the percentage of the whole person the worker's loss represents as appropriate for injuries occurring on or after January 1, 2005;

(e) If there is no permanent disability award for this Notice of Closure, a statement to that effect;

(f) The duration of temporary total and temporary partial disability compensation;

(g) The date the Notice of Closure was mailed;

(h) The medically stationary date or the date the claim statutorily qualifies for closure under OAR 436-030-0035 or 436-030-0034;

(i) The date the worker's aggravation rights end;

(j) The worker's appeal rights;

(k) The right of the worker to consult with the Ombudsman for Injured Workers;

(l) For claims with dates of injury before January 1, 2005, the rate in dollars per degree at which permanent disability, if any, will be paid based on date of injury as identified in Bulletin 111;

(m) For claims with dates of injury on or after January 1, 2005, the state's average weekly wage applicable to the worker's date of injury is to be shown on the Notice of Closure;

(n) The worker's return to work status; and

(o) A general statement that the insurer has the authority to recover an overpayment.

(7) The Notice of Closure (Form 440-1644) must be accompanied by the following:

(a) The brochure "Understanding Claim Closure and Your Rights";

(b) A copy of summary worksheet Form 2807 containing information and findings which result in the data appearing on the Notice of Closure;

(c) An accurate description of the physical requirements of the worker's job held at the time of injury unless previously provided pursuant to section (2)(b)(A) of this rule;

(d) The Updated Notice of Acceptance at Closure which clearly identifies all accepted conditions in the claim and specifies those which have been denied and are on appeal and/or which were the basis for this opening of the claim; and

(e) A cover letter that:

(A) Specifically explains why the claim has been closed (e.g., expiration of a period of suspension without the worker resolving the problems identified, an attending physician stating the worker is medically stationary, worker failure to treat without attending physician authorization or establishing good cause for not treating, etc.);

(B) Lists and describes enclosed documents; and

(C) Notifies the worker about the end of temporary disability benefits, if any, and the anticipated start of permanent disability benefits, if any.

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(8) A copy of the Notice of Closure must be mailed to each of the following persons at the same time, with each copy clearly identifying the intended recipient:

- (a) The worker;
- (b) The employer;
- (c) The director; and
- (d) The worker's attorney, if the worker is represented.

(9) The worker's copy of the Notice of Closure must be mailed by both regular mail and certified mail return receipt requested.

(10) An insurer may use electronically produced Notice of Closure forms if consistent with the form and format prescribed by the director.

(11) Insurers may allow adjustments of benefits awarded to the worker under the documentation requirements of OAR 436-060-0170 for the following purposes:

(a) To recover payments for permanent disability which were made prematurely;

(b) To recover overpayments for temporary disability; and

(c) To recover overpayments for other than temporary disability such as prepaid travel expenses where travel was not completed, prescription reimbursements, or other benefits payable under ORS 656.001 to 656.794.

(12) The insurer may allow overpayments made on a claim with the same insurer to be deducted from compensation to which the worker is entitled but has not yet been paid.

(13) If after claim closure, the worker became enrolled and actively engaged in an approved training program under OAR 436-120, a new Notice of Closure must be issued consistent with the following:

(a) In claims with dates of injury on or after January 1, 2005, the insurer must redetermine work disability when:

- (A) The worker has ended training; and either
- (B) The worker's condition is medically stationary; or
- (C) The claim otherwise qualifies for closure in accordance with these rules.

(b) For claims with dates of injury before January 1, 2005, permanent disability must be redetermined by the insurer when:

- (A) The worker has ended training; and either
- (B) The worker's condition is medically stationary; or
- (C) The claim otherwise qualifies for closure in accordance with these rules., except

(D) When the worker became medically stationary after June 7, 1995 for a scheduled disability. Then the scheduled disability must remain unchanged from the last award of compensation in that claim unless the condition did not remain medically stationary through training.

(c) For claims with dates of injury before January 1, 2005, if the worker has remained medically stationary throughout training and the closing examination is six months old or older, a current medical examination will be required for redetermination unless the worker's attending physician provides a written statement that there has been no change in the worker's accepted condition since the previous closing examination.

(14) When, after a claim is closed, the insurer changes or is ordered to change the worker's weekly wage upon which calculation of the work disability portion of a permanent disability award may be based, the insurer must notify the parties and the division of the change and the effect of the change on any permanent disability award. For purposes of this rule, the insurer must complete Form 440-1502 consistent with the instructions of the director and disperse it within 14 days of the change.

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

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999

Stats. Implemented: ORS 656.210, 656.212, 656.214, 656.268 & 656.270, 656.726, 656.745, OL Ch. 332 1995 & Ch. 313 1999

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0006, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1991, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0023

Correcting and Rescinding Notices of Closure

(1) An insurer may rescind or correct its Notice of Closure prior to the expiration of the appeal period for that Notice and prior to or on the same day that the director receives a request for reconsideration of the Notice of Closure.

(2) The form, format, and completion of the Correcting and Rescinding Notices of Closure are the same as those of the Notice of Closure except that, to correct a Notice of Closure, a Form 440-1644c (Form 1644c) must be used and, to rescind a Notice of Closure, a Form 440-1644r (Form 1644r) must be used.

(3) The "Date of closure (mailing date)" on the Correcting or Rescinding Notice of Closure must be the date the correction or rescission is mailed. The mailing date of the Notice of Closure being rescinded or corrected must be identified within the body of the Correcting or Rescinding Notice of Closure.

(4) The worker's copy of the Correcting and Rescinding Notices of Closure must be mailed by both regular mail and certified mail return receipt requested, consistent with OAR 436-030-0020(8) and (9).

(5) Rescinding Notices of Closure, Form 1644r, are used to rescind the Notice of Closure and return the claim to open status. Examples of appropriate uses of Rescinding Notices of Closure include, but are not limited to:

(a) The worker was not medically stationary at the time the Notice of Closure was issued;

(b) The closure was otherwise premature;

(c) Grant PPD when the Notice of Closure being rescinded granted TTD only.

(6) The Rescinding Notice of Closure must:

(a) Advise the worker that the claim remains open and no aggravation rights end date has been established, if it is rescinding the first closure of the claim;

(b) Initiate a 60-day appeal period during which any request for reconsideration must be received by the director;

(c) Explain the reason for the action being taken; and

(d) Be distributed and mailed to the parties consistent with these rules.

(7) When a Notice of Closure granting only timeloss has been issued, if the insurer determines the worker's medically stationary status is unchanged and the worker is entitled to an award of permanent disability, the insurer must use a Notice of Closure, Form 1644, to rescind and reissue the closure. In such cases, the Notice of Closure must:

(a) Contain all required information consistent with these rules;

(b) Bear the heading "Rescind and Reissue";

(c) Explain the reason the action is being taken;

(d) Identify the permanent disability award being granted consistent with OAR 436-030 and 436-035;

(e) Establish a new 60-day appeal period;

(f) Set a new aggravation rights end date if the Notice of Closure being rescinded is the first closure of the claim; and

(g) Be distributed and mailed to the parties consistent with these rules.

(8) Correcting Notices of Closure, Form 1644c, are used to correct errors or omissions and do not change the closure status or the action taken by the Notice of Closure being corrected. Correcting Notices of Closure must not be used to grant permanent disability in claims where the Notice of Closure being corrected did not include an award of permanent disability. Examples of appropriate uses of Correcting Notices of Closure include, but are not limited to:

(a) Permanent disability award computation errors (dollars, degrees, percentages);

(b) An incorrect "mailing date";

(c) Return-to-work status errors or omissions;

(d) Incorrect or incomplete statement of temporary disability.

(9) A Correcting Notice of Closure must:

(a) Be issued when the director has instructed the insurer to do so because the Notice of Closure did not contain the information required by OAR 436-030-0020(4);

(b) Not be used to add a new condition to the claim closure, rate a new condition not considered in the Notice of Closure being corrected, or rescind a Notice of Closure;

(c) State in the body of the correcting notice only the information being corrected on the Notice of Closure and the basis for the correction;

(d) Not change the appeal period for the Notice of Closure being corrected; and

(e) Initiate a new 60-day appeal period during which any request for reconsideration must be received, but only for those items being corrected.

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

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999

Stats. Implemented: ORS 656.210, 656.212, 656.214, 656.268 & 656.270, 656.726, 656.745, OL Ch. 332 1995 & Ch. 313 1999

Hist.: WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0034

Claim Closure When the Worker Is Not Medically Stationary

(1) The insurer must close a claim if a worker fails to seek treatment for more than 30 days without the instruction or approval of the attending physician or authorized nurse practitioner. In order to close a claim under this rule, the insurer must:

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(a) After waiting the period of thirty days for the worker to treat, send the worker written notification of the following by certified mail:

(A) It is the worker's responsibility to seek medical treatment in a timely manner;

(B) Informing the worker of the consequences for failing to seek treatment in a timely manner, including but not limited to claim closure and possible loss or reduction of a disability award, if any;

(C) That the claim will be closed unless the worker establishes within 14 days that:

(i) Treatment has resumed by attending an existing appointment or scheduling a new appointment; or

(ii) The reasons for not treating were outside the worker's control.

(b) Wait the 14 day period given in the notification letter to allow the worker to provide evidence that the absence of treatment was either authorized by the physician or beyond the worker's control.

(c) Determine whether claim closure is appropriate based on the information provided by the worker or absence thereof.

(d) Rate any permanent disability apparent in the record (e.g., irreversible findings) at the time claim closure is appropriate, regardless of receiving a response from the worker.

(2) The date the claim qualifies for closure, when a worker fails to seek treatment for a period in excess of 30 days, is the latest (most chronologically recent) of the following which occurs prior to the closure:

(a) 30 days from the last treatment provided or authorized by the attending physician or authorized nurse practitioner;

(b) The date the worker failed to attend a follow-up visit that was recommended by the attending physician or authorized nurse practitioner for reasons within the worker's control;

(c) The date the worker returns to or is released to regular work if it is after the last examination date; or

(d) If the worker responds within the 14 day period established by the notification letter and the worker's response fails to establish that the worker has resumed treatment or that the reasons for not treating were outside the worker's control, the date of the worker's response.

(3) A claim must be closed when the worker is not medically stationary, and the worker fails to attend a mandatory closing examination for reasons within the worker's control, and the insurer has notified the worker, by certified letter, at least 10 days prior to the mandatory examination, that claim closure will result for failure to attend a mandatory closing examination. The notification letter must inform the worker of the worker's responsibility to attend the mandatory closing examination and of the consequences for failing to do so, including but not limited to claim closure and the possible loss or reduction of a disability award.

(a) Workers have 7 days from the date of exam to demonstrate good cause for failing to attend, before any further action is taken by the insurer toward claim closure.

(b) Where the worker fails to attend a mandatory closing examination for reasons within the worker's control, the date the claim qualifies for closure is the date of the failed mandatory closing examination.

(c) Where a closing exam has been scheduled between a worker and attending physician directly, insurers may close under (1) of this section.

(4) A claim may be closed when the worker is not medically stationary and a major contributing cause denial has been issued on an accepted combined condition.

(a) The major contributing cause denial must inform the worker that claim closure may result from the issuance of the denial and provide all other information required by these rules.

(b) When a major contributing cause denial has been issued following the acceptance of a combined condition, the date the claim qualifies for closure is the date the insurer receives sufficient information to determine the extent of any permanent disability under OAR 436-035-0007(5) and 436-030-0020(2) or the date of the denial, whichever is later.

(5) When any two of the above occur concurrently, the earliest date the claim qualifies for closure is used to close the claim and noted on the notice.

(6) The attending physician or authorized nurse practitioner must be copied on all notification and denial letters applicable to this rule.

(7) When the director has issued a suspension order, under OAR 436-060-0095 and 436-060-0105, the date the claim qualifies for closure is the date of the suspension order.

(8) When a worker fails to seek treatment with an authorized attending physician as defined by ORS 656.005 or authorized nurse practitioner as defined in ORS 656.245, the claim must be closed under section (1) of this rule. Section (2) of this rule must be used to determine the effective date of the closure. All notification letters issued under this section of the

rule must clearly identify that the reason for the impending closure is because of the worker's failure to treat with an authorized attending physician or nurse practitioner.

Stat. Auth.: ORS 656.262, 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999

Stats. Implemented: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999

Hist.: WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0035

Determining Medically Stationary Status

(1) A worker's compensable condition is medically stationary when the attending physician, authorized nurse practitioner, or a preponderance of medical opinion declares the worker either "medically stationary," "medically stable," or uses other language meaning the same thing.

(2) When there is a conflict in the medical opinions as to whether or not a worker's compensable condition is medically stationary, more weight is given to medical opinions that are based on the most accurate history, on the most objective findings, on sound medical principles, and clear and concise reasoning.

(3) Where there is not a preponderance of medical opinion stating a worker's compensable condition is or is not medically stationary, deference will generally be given to the opinion of the attending physician. However, in cases where expert analysis is important, deference is given to the opinion of the physician with the greatest expertise in, and understanding of, the worker's condition.

(4) When there is a conflict as to the date upon which a worker's compensable condition became medically stationary, the following conditions govern the determination of the medically stationary date. The date a worker is medically stationary is the earliest date that a preponderance is established under sections (1) and (2) of this rule. The date of the examination, not the date of the report, controls the medically stationary date.

(5) The insurer must request the attending physician's concurrence or comments when the attending physician arranges, or refers the worker for a closing examination with another physician to determine the extent of impairment or when the insurer refers a worker for an insurer medical examination. A concurrence with another physician's report is an agreement in every particular, including the medically stationary impression and date, unless the physician expressly states to the contrary and explains the reasons for disagreement. Concurrence cannot be presumed in the absence of the attending physician's response.

(6) A worker is medically stationary on the date of the examination when so specified by a physician. When a specific date is not indicated, a worker is presumed medically stationary on the date of the last examination, prior to the date of the medically stationary opinion. Physician projected medically stationary dates cannot be used to establish a medically stationary date.

(7) If the worker is incarcerated or confined in some other manner and unable to freely seek medical treatment, the insurer must arrange for medical examinations to be completed at the facility where the worker is located or at some other location accessible to the worker.

(8) If a worker dies and the attending physician has not established a medically stationary date, for purposes of claim closure, the medically stationary date is the date of death.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999

Stats. Implemented: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999

Hist.: WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0036

Determining Temporary Disability

(1) Temporary disability must be determined under ORS Chapter 656, OAR 436-060 and this rule, less time worked. Beginning and ending dates of each authorized period of temporary total disability and temporary partial disability must be noted on the Notice of Closure, as well as the statements "Less time worked" and "Temporary disability was determined in accordance with the law."

(2) Except as provided in section (3) of this rule and ORS 656.268(9), a worker is not entitled to any award for temporary disability for any period of time in which the worker is medically stationary.

(3) Awards of temporary disability must include the day the worker is medically stationary or the date the claim otherwise qualifies for closure, unless temporary disability is not authorized for another reason at that time.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999

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Stats. Implemented: ORS 656.005, 656.160, 656.210, 656.212, 656.236, 656.245, 656.262, 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Hist.: WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0055

Determining Permanent Total Disability

(1) A worker is permanently and totally disabled if permanently incapacitated from regularly performing work in a suitable and gainful occupation. For the purpose of this rule and OAR 436-030-0065:

(a) "Incapacitated from regularly performing work" means that the worker does not have the necessary physical and mental capacity and the work skills to perform work on a regular basis. Employment in a sheltered workshop is not considered regular employment unless this was the worker's job at the time of injury.

(b) "Suitable occupation" means those occupations that exist in a theoretically normal labor market, within a reasonable geographic distance, for which a worker has the training or experience, and abilities to realistically perform the job duties, with or without rehabilitation.

(c) "Gainful occupation" means those types of general occupations that pay wages equivalent to, or greater than, the state mandated hourly minimum wage. Those types of general occupations that pay on a commission or piece-work basis, as opposed to a wage or salary basis, may not be "gainful employment" depending upon the facts of the individual situation.

(d) "Work skills" means those skills acquired through experience or training that are necessary to gain and adequately perform skilled, semi-skilled or unskilled occupations. Unskilled types of general occupations require no specific skills that would be acquired through experience or training to be able to gain and adequately perform the unskilled occupation. Every worker has the necessary work skills to gain and adequately perform unskilled types of general occupations with a reasonable period of orientation.

(e) A "reasonable geographic distance" means either of the following unless the worker is medically precluded from commuting:

(A) The area within a 50-mile radius of the worker's place of residence at the time of:

- (i) The original injury;
- (ii) The worker's last gainful employment;
- (iii) Insurer's determination; or
- (iv) Reconsideration by the director.

(B) The area in which a reasonable and prudent uninjured and unemployed person, possessing the same physical capacities, mental capacities, work skills, and financial obligations as the worker does at the time of his rating of disability, would go to seek work.

(f) "Types of general occupations" means groups of jobs which actually exist in a normal labor market, and share similar vocational purpose, skills, duties, physical circumstances, goals, and mental aptitudes. It does not refer to any specific job or place of employment for which a job or job opening may exist in the future.

(g) "Normal labor market" means a labor market that is undistorted by such factors as local business booms and slumps or extremes of the normal cycle of economic activity, or technology trends in the long-term labor market.

(h) "Withdrawn from the workforce" means a worker who is not employed, is not willing to be employed, or although willing to be employed is not making reasonable efforts to find employment, unless such efforts would be futile. The receipt of retirement benefits does not establish a worker has withdrawn from the workforce.

(2) All disability which existed before the injury must be included in determining permanent total disability.

(3) In order for a worker to be determined permanently and totally disabled, a worker must:

- (a) Prove permanent and total disability;
- (b) Be willing to seek regular and gainful employment;
- (c) Make reasonable effort to find work at a suitable and gainful occupation or actively participate in a vocational assistance program, unless medical or vocational findings, including the residuals of the compensable injury, make such efforts futile; and
- (d) Not have withdrawn from the workforce during the period for which benefits are being sought.

(4) A worker retaining some residual functional capacity and not medically permanently and totally disabled must prove:

(a) The worker has not withdrawn from the workforce for the period for which benefits are being sought;

(b) Inability to regularly perform work at a gainful and suitable occupation; and

(c) The futility of seeking work if the worker has not made reasonable work search efforts by competent written vocational testimony. Competent written vocational testimony is that which is available at the time of closure or reconsideration and comes from the opinions of persons fully certified by the State of Oregon to render vocational services.

(5) Notices of Closure and Orders on Reconsideration which grant permanent total disability must notify the worker that:

(a) The claim must be reexamined by the insurer at least once every two years, and may be reviewed more often if the insurer chooses.

(b) The insurer may require the worker to provide a sworn statement of the worker's gross annual income for the preceding year. The worker must make the statement on a form provided by the insurer in accordance with the requirements under section (6) of this rule.

(6) If asked to provide a statement under subsection (5)(b) of this rule, the worker is allowed 30 days to respond. Such statements are subject to the following:

(a) If the worker fails to provide the requested statement, the director may suspend the worker's permanent total disability benefits. Benefits must be resumed when the statement is provided. Benefits not paid for the period the statement was withheld must be recoverable for no more than one year from the date of suspension.

(b) If the worker provides a report which is false, incomplete, or inaccurate, the insurer must investigate. The investigation may result in suspension of permanent total disability benefits.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Stats. Implemented: ORS 656.206, 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Hist.: WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0066

Review of Prior Permanent Partial Disability Awards

For claims having a date of injury prior to January 1, 2005 which involve unscheduled body parts, areas, or systems as defined by OAR 436-035-0005, and all claims with dates of injury on or after January 1, 2005, an award of permanent partial disability is subject to periodic examination and adjustment under ORS 656.268 and 656.325 and in accordance with the following conditions:

(1) Requests for review and adjustment must be made in writing to the Workers' Compensation Division.

(2) The party requesting review of permanent disability must send a copy of the request to all involved parties at the time the request is made. The worker may submit any information in rebuttal.

(3) All pertinent medical, vocational, and other applicable evidence must be submitted with the request, including sufficient information to determine the extent of permanent partial disability. The request must state the basis for the request and provide supporting evidence. If the director finds that the worker has failed to accept treatment as provided in this rule, the director will make any necessary adjustments allowed under OAR 436-035.

(4) The basis for the request for adjustment in the permanent disability award must be asserted to be failure of the worker to make a reasonable effort to reduce the disability.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Stats. Implemented: ORS 656.325, 656.331, 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Hist.: WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0115

Reconsideration of Notices of Closure

(1) A worker or insurer may request reconsideration of a Notice of Closure by mailing or delivering the request to the director within the statutory appeal period as defined in OAR 436-030-0005(6) and 436-030-0145(1). The reconsideration proceeding begins as described in OAR 436-030-0145(2).

(2) For the purpose of these rules, "reconsideration proceeding" means the procedure established to reconsider a Notice of Closure and does not include personal appearances by any of the parties to the claim or their representatives, unless requested by the director. All information to correct or clarify the record and any medical evidence regarding the worker's condition as of the time of claim closure that should have been but was not submitted by the attending physician or authorized nurse practitioner at the

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time of claim closure and all supporting documentation must be presented during the reconsideration proceeding. When the reconsideration proceeding is postponed because the worker's condition is not medically stationary under OAR 436-030-0165(10), medical evidence submitted may address the worker's condition after claim closure as long as the evidence satisfies the conditions of OAR 436-030-0145(3).

(3) All parties have an opportunity to submit documents to the record regarding the worker's status at the time of claim closure. Other factual information and written argument may be submitted for incorporation into the record under ORS 656.268(6) within the time frames outlined in OAR 436-030-0145. Such information may include, but is not limited to, responses to the documentation and written arguments, written statements, and sworn affidavits from the parties.

(4) The worker may submit a deposition to the reconsideration record subject to ORS 656.268(6) and the following:

(a) The deposition must be limited to the testimony and cross-examination of a worker about the worker's condition at the time of claim closure.

(b) The deposition must be arranged by the worker and held during the reconsideration proceeding time frame unless a good cause reason is established. If a good cause reason is established, the time frame for holding the deposition may be extended but must not extend beyond 30 days from the date of the Order on Reconsideration. The deposition must be held at a time and place that permits the insurer or self-insured employer the opportunity to cross-examine the worker.

(c) The insurer or self-insured employer must, within 30 days of receiving a bill for the deposition, pay the fee of the court reporter and the costs for the original transcript and its copies. An original transcript of the deposition must be sent to the department and each party must be sent a copy of the transcript.

(d) If the transcript is not completed and presented to the department prior to the deadline for issuing an Order on Reconsideration, the Order on Reconsideration may not be postponed to receive a deposition under this rule and the order will be issued based on the evidence in the record. However, the transcript may be received as evidence at a hearing for an appeal of the Order on Reconsideration.

(5) Only one reconsideration proceeding may be completed on each Notice of Closure and the director will do a complete review of that notice. Once the reconsideration proceeding is initiated, any additional issues must be raised and further evidence submitted within the time frames allowed for processing the reconsideration request. When the director requires additional information to complete the record, the reconsideration proceeding may be postponed under ORS 656.268(6).

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313, sec 12 (6)(a)(A), 865, OL 2001
Stats. Implemented: ORS 656.268 & 1999 OL Ch. 313 sec 12 (6)(a)(A), 865, OL 2001
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 11-1995(Temp), f. & cert. ef. 8-23-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0135

Reconsideration Procedure

(1) If the director assists the worker in completing the request for reconsideration, the director will notify the worker that the proceeding may result in an increase, decrease, or no change in entitlement to benefits.

(2) Upon starting the reconsideration proceeding, the director will send the parties a letter of acknowledgement which includes:

(a) The proceeding's start date;

(b) The timelines for submitting additional information to be included in the record;

(c) A certification that the letter has been mailed to the listed parties; and

(d) The last date an Order on Reconsideration can be issued or the proceeding postponed, and the status of the request if the director fails to issue an Order on Reconsideration or postponement under the time limits specified in ORS 656.268.

(3) Within 14 days from the start date of the reconsideration proceeding, the insurer must provide the director and the worker or the worker's attorney all documents pertaining to the claim which include, but are not limited to the complete medical record and all official actions and notices on the claim.

(4) The request for reconsideration and all other information submitted to the director by any party during the reconsideration process must be copied to all interested parties. Failure to comply with this requirement may result in the information not being included as part of the record on reconsideration. The director may assist a worker in meeting this requirement.

(5) The director will issue an order rescinding a Notice of Closure when the director finds, upon reconsideration:

(a) The claim was closed prematurely because the worker's accepted condition(s) was not medically stationary and the claim did not qualify for closure under ORS 656.268(1)(a); or

(b) The claim was not closed according to the requirements of these rules and ORS 656.268(1)(b) or (c).

(6) When a worker has requested and cashed a lump sum payment, under ORS 656.230, of an award granted by a Notice of Closure, the director will not consider the adequacy of that award in a reconsideration proceeding.

(7) When a new condition is accepted after a prior claim closure, and the newly accepted condition is subsequently closed, the director and the parties may mutually agree to consolidate requests for review of the closures into one reconsideration proceeding, provided the director has jurisdiction and neither of the closures have become final by operation of law.

(8) The reconsideration order will address issues raised by the parties and will address compensation as follows:

(a) Compensation reduced in a reconsideration order will be "in lieu of" any compensation awarded by the Notice of Closure.

(b) Additional compensation awarded in a reconsideration order will be "in addition to" any compensation awarded by the Notice of Closure. The reconsideration order may award total compensation due less any compensation previously ordered.

(c) Any compensation affirmed in a reconsideration order will be so stated.

(d) The dollar rate per degree of disability will be listed if appropriate based on the date of injury or an explanation of the computation method used, including wage, percent of loss of the whole person, and other pertinent factors.

(9) A copy of the reconsideration order will be sent to the worker, employer(s), insurer(s), worker's attorney if the worker is represented, and the insurer's attorney(s), if the insurer is represented.

(10) When a party discovers after the reconsideration order has been issued and before the order on reconsideration has become final by operation of law, that additional documents were not provided by the opposing party in accordance with this rule, the Order on Reconsideration may be abated and withdrawn to give the party an opportunity to respond to the new information.

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313
Stats. Implemented: ORS 656.268(6) & 1999 OL Ch. 313
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0145

Reconsideration Time Frames and Postponements

(1) Statutory time frames for appealing a Notice of Closure are:

(a) For claims with a medically stationary date prior to June 7, 1995, the appeal period is 180 days from the claim closure. The time required to complete the reconsideration proceeding pursuant to this rule must not be included in the 180 days from the mailing date of the Notice of Closure to request a hearing.

(A) The 180-day time limit will be tolled upon receipt of the request for reconsideration from the mailing date of the request for reconsideration until the reconsideration request is either dismissed or an Order on Reconsideration is issued.

(B) The 180-day time limit will not be tolled when a request for reconsideration is withdrawn under OAR 436-030-0185.

(b) For claims with a medically stationary date, or date the claim statutorily qualifies for closure, on or after June 7, 1995, a request for reconsideration must be mailed within 60 days of the mailing date of the Notice of Closure. A request for hearing must be made within 30 days of the mailing date of the Order on Reconsideration.

(c) For claims closed on or after January 1, 2004, the insurer's request for reconsideration is limited to the findings used to rate impairment and must be mailed within seven days of the mailing date of the Notice of Closure.

(2) The reconsideration proceeding begins upon:

(a) The director's receipt of the worker's request for reconsideration, if the insurer has not previously requested reconsideration consistent with subsection (1)(c) of this rule; or

(b) The 61st day after the closure of the claim, if the insurer has requested reconsideration consistent with subsection (1)(c) of this rule; unless the director receives, within the appeal time frames in section (1) of

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this rule, a request for reconsideration or a statement by the worker instructing the director to start the reconsideration proceeding.

(3) Fourteen days after the date the reconsideration proceeding begins, the reconsideration request and all other appropriate information submitted by the parties will become part of the record used in the reconsideration proceeding.

(a) Evidence received or issues raised subsequent to the 14 day deadline will be considered in the reconsideration proceeding to the extent practicable.

(b) Upon review of the record the director may request, in accordance with ORS 656.268(6), any additional information deemed necessary for the reconsideration and set appropriate time frames for response.

(c) Except as provided in section (5) and (6) of this rule, the director will either mail an Order on Reconsideration within 18 working days from the date the reconsideration proceeding begins or notify the parties that the reconsideration proceeding is postponed for not more than 60 additional days in accordance with the provisions of ORS 656.268(6).

(4) Medical arbiter panel requests must be received by the department within the 14 day time frame beginning on the date the reconsideration proceeding starts.

(5) When the director provides notice the worker failed to attend the medical arbiter examination without good cause or failed to cooperate with the arbiter examination and suspends benefits under ORS 656.268(7), the reconsideration proceeding will be postponed for up to 60 additional days from the date the director determines and provides notice, to allow completion of the arbiter process.

(6) When the reconsideration proceeding has been stayed, the director will notify the parties that it has been stayed for one of the following reasons:

(a) To determine whether temporary rules amending "the standards" are required to properly rate the worker's impairment, under ORS 656.726(4)(f);

(b) The parties consent to deferring the reconsideration proceeding, under ORS 656.268(7)(i)(B), when the medical arbiter examination is not medically appropriate because the worker's medical condition is not stationary; or

(c) When a Claim Disposition Agreement (CDA) is filed with the Workers' Compensation Board, the reconsideration proceeding is stayed until the CDA is either approved by a final order of the Board or the Board sets aside the disposition.

(7) If the director fails to mail an Order on Reconsideration or a Notice of Postponement under the time frames specified in ORS 656.268, the reconsideration request is automatically deemed denied. The parties may immediately thereafter proceed as though the director had issued an Order on Reconsideration affirming the Notice of Closure. Under section (1) of this rule, the counting of the 180-day time limit for requesting a hearing under former ORS 656.268(6)(b) will resume on the date after the director should have issued an Order on Reconsideration.

(8) Notwithstanding any other provision regarding the reconsideration proceeding, the director may extend nonstatutory time frames to allow the parties sufficient time to present evidence and address their issues and concerns.

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313
Stats. Implemented: ORS 656.268, 656.726(3)(f)(C) & 1999 OL Ch. 313
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0155 Reconsideration Record

(1) The record for the reconsideration proceeding includes all documents and other material relied upon in issuing the Order on Reconsideration as well as any additional material submitted by the parties, but not considered in the reconsideration proceeding. The record is maintained in the Workers' Compensation Division's claim file and consists of all documents and material received and date stamped by the director prior to the issuance of the Order on Reconsideration, unless the document(s) is an exact duplicate of what is in the file then the director is not required to retain the duplicate document(s).

(2) Except as noted in this section, the medical record submitted by the director for arbiter review will consist of all medical documents and medical material produced by the claim under reconsideration, provided the information is allowable under ORS 656.268.

(a) The director may not submit non-medical information, nursing notes, or physical therapy treatment notes to the arbiter unless:

(A) A party requests the director to submit those specific materials to the arbiter;

(B) The party identifies and provides the director with specific dates of those materials requested to be submitted; and

(C) The materials otherwise meet the requirements of this rule.

(b) All medical documents and other medical materials not submitted by the director to the medical arbiter will be stamped in the lower right hand corner "not sent to arbiter".

(3) When any surveillance videotape obtained prior to closure has been submitted to physician(s) involved in the evaluation or treatment of the worker, it must be provided for arbiter review. All written materials previously forwarded to physician(s) along with the surveillance videotape, such as investigator field notes, summary or narrative reports, and cover letters, must also be submitted. Surveillance videotape must be labeled according to the date(s) and total time of the recording(s).

(4) When reconsideration is requested, the insurer is required to provide the director and the other parties with a copy of all documents contained in the record at claim closure. For cases involving a medical service 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 medical service provider's authority to act as an attending physician. Any information the director adds to the record, such as the medical arbiter report, will be copied to all parties. Responses of the parties to the medical arbiter report will be included in the record if received prior to completion of the reconsideration proceeding.

(5) Since all parties will have a complete copy of the record at reconsideration prior to the issuance of a reconsideration order, additional certified copies of the record will be made at a charge to the requesting party.

(6) When a hearing is scheduled following the appeal of a reconsideration order and the parties or the administrative law judge requests the director to provide the record at reconsideration, either the original claim file or a certified copy of the claim file will be delivered to the Hearings Division two days prior to the hearing. The original claim file must be returned to the director within two days after the hearing.

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313
Stats. Implemented: ORS 656.268(6) & 1999 OL Ch. 313
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0165 Medical Arbiter Examination Process

(1) When a worker or insurer requests reconsideration and disagrees with the impairment findings used in rating the worker's disability at the time of claim closure, the director will refer the claim to a medical arbiter or panel of arbiters.

(a) When the director determines that sufficient medical information is not available to rate disability the director may refer the claim to a medical arbiter or panel of arbiters.

(b) The director will notify the parties within 18 working days from the date the reconsideration proceeding begins that a medical arbiter review will be scheduled.

(2) The director will select a medical arbiter physician or a panel of physicians in accordance with ORS 656.268(7)(d).

(a) Any party that objects to a physician on the basis that the physician is not qualified under ORS 656.005(12)(b) must notify the director prior to the examination of the specific objection. If the director determines that the physician is not qualified to be a medical arbiter on the specific case, an examination will be scheduled with a different physician. All costs related to the completion of the medical arbiter process in this rule must be paid by the insurer.

(b) When the worker resides outside the state of Oregon, a medical arbiter examination may be scheduled out-of-state with a physician who is licensed within that state to provide medical services in the same manner as required by ORS 656.268(7).

(c) Arbiters or panel members will not include any medical service providers whose examination or treatment is the subject of the review.

(3) When the director has determined a claim qualifies for medical arbiter deselection, a list of appropriate physicians will be faxed or sent by overnight mail to the parties.

(a) Each party may eliminate one physician from the list by crossing out the physician's name.

(b) The parties may agree to one physician from the list by responding in writing. The parties must also deselect one physician from the list in case the agreed upon physician is unavailable.

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(c) All responses must be signed and received by the director within three business days. No further opportunity will be given for the parties to provide input regarding the arbiter deselection process once the three business day period has expired. No further attempts at deselection will be made when continuing the arbiter deselection process is not practical.

(4) The director will notify the parties of the time and place of the medical arbiter examination. This notice will also inform the worker that failure to attend the medical arbiter examination or to cooperate with the medical arbiter will result in suspension of all disability benefits effective on the date of the examination unless the worker establishes a "good cause" reason for missing the examination or for not cooperating with the arbiter. The appointment letter will instruct the worker to call the director within 24 hours after failing to attend the examination to provide any "good cause" reason for missing the exam.

(a) Notice of the examination will be considered adequate notice if the appointment letter is mailed to the last known address of the worker and to the worker's attorney if the worker is represented.

(b) For the purposes of this rule, non-cooperation includes, but is not limited to, refusal to complete any reasonable action necessary to evaluate the worker's impairment. However, it does not include circumstances such as a worker's inability to carry out any part of the examination due to excessive pain or when the physician reports the findings as medically invalid.

(c) Failure of the worker to respond within the time frames outlined in statute for completion of the reconsideration proceeding may be considered a failure to establish "good cause."

(5) If a worker misses the medical arbiter examination, the director will determine whether or not there was a "good cause" reason for missing the examination.

(6) Upon determination that there was not a "good cause" reason for missing the examination, or that the worker failed to cooperate with the arbiter, the director will:

(a) Issue a notice to the worker that disability benefits are suspended and that the reconsideration proceeding is postponed up to an additional 60 days, and

(b) Reschedule an examination for the worker to complete the medical arbiter review within the additional 60-day postponement period.

(7) As addressed in the Order on Reconsideration, the suspension will be lifted if any of the following occurred during the additional 60-day postponement period:

(a) The worker established a "good cause" reason for missing or failing to cooperate with the examination;

(b) The request for reconsideration was withdrawn by the worker; or

(c) The worker attended and cooperated with a rescheduled arbiter examination.

(8) If none of the events which end the suspension under section (7) of this rule occurred prior to the expiration of the 60-day additional postponement, the director will complete the reconsideration proceeding under ORS 656.268(7) and the Order on Reconsideration will order the suspension of benefits to remain in effect.

(9) The medical arbiter or panel of medical arbiters must perform a record review or examine the worker as requested by the director and perform such tests as may be reasonable and necessary to establish the worker's impairment. The director will provide notice of the examination of the worker to all parties.

(a) The parties must submit any issues they wish the medical arbiter or panel of medical arbiters to address within 14 days after the date the reconsideration proceeding begins. The parties must not submit issues directly to the medical arbiter or panel of medical arbiters. The director will only submit issues appropriate to the reconsideration proceeding to the medical arbiter or panel of medical arbiters.

(b) The report of the medical arbiter or panel of medical arbiters must address all questions raised by the director.

(c) The director will instruct the medical arbiter to provide copies of the arbiter report to the director, the worker or the worker's attorney, and the insurer(s) within five working days after completion of the arbiter review. The cost of providing copies of such additional reports must be reimbursed according to OAR 436-009-0070 and must be paid by the insurer.

(10) When the worker's medical condition is not stationary on reconsideration which may result in difficulties in obtaining findings of impairment by the arbiter, the director will, where appropriate, send a letter to the parties requesting consent to defer the reconsideration proceeding.

(a) If the parties agree to the deferral, the reconsideration proceeding will be deferred until the medical record reflects the worker's condition has stabilized sufficiently to allow for examination to obtain the impairment findings. The parties must notify the director when it is appropriate to

schedule the medical arbiter examination and provide the necessary medical records when requested. Interim medical information that may be helpful to the director and the medical arbiter in assessing and describing the impairment due to the compensable condition(s) may be submitted at the time the parties notify the director that the medical arbiter exam can be scheduled. The director will determine whether the interim medical information is consistent with the provisions of ORS 656.268(6) and (7).

(b) If deferral is not appropriate, at the director's discretion either a medical arbiter examination or a medical arbiter record review may be obtained, or the director may issue an Order on Reconsideration based on the record available at claim closure and other evidence submitted in accordance with ORS 656.268(6).

(11) All costs related to record review, examinations, tests, and reports of the medical arbiter must be paid under OAR 436-009-0015, 436-009-0040, and 436-009-0070.

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313

Stats. Implemented: ORS 656.268 & 1999 OL Ch. 313

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 11-1995(Temp), f. & cert. ef. 8-23-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0175

Fees and Penalties Within the Reconsideration Proceeding

(1) An insurer failing to provide information or documentation as set forth in OAR 436-030-0135, 436-030-0145, 436-030-0155 and 436-030-0165 may be assessed civil penalties under OAR 436-030-0580. Failure to comply with the requirements set forth in OAR 436-030-0135, 436-030-0145, 436-030-0155, and 436-030-0165 may also be grounds for extending the reconsideration proceeding under ORS 656.268(6).

(2) If upon reconsideration of a Notice of Closure there is an increase of 25 percent or more in the amount of permanent disability compensation from that awarded by the Notice of Closure, and the worker is found to be at least 20 percent permanently disabled, the insurer will be ordered to pay the worker a penalty equal to 25 percent of the increased amount of permanent disability compensation. If an increase in compensation results from the promulgation of a temporary emergency rule, penalties will not be assessed. For claims with medically stationary dates or statutory closure dates on or after June 7, 1995, if the increase in compensation results from new information obtained through a medical arbiter examination, the penalty will not be assessed.

(3) For the purpose of section (2) of this rule, a worker who receives a total sum of 64 degrees of scheduled or unscheduled disability or a combination thereof, will be found to be at least 20 percent disabled. For example: A worker who receives 20 percent disability of a great toe (3.6 degrees) is not considered 20 percent permanently disabled because the great toe is only a portion of the whole person. A worker who is 100 percent permanently disabled is entitled to 320 degrees of disability. A worker who receives 64 degrees (20 percent of 320 degrees), whether scheduled, unscheduled or a combination thereof, will be considered the equivalent of at least 20 percent permanently disabled for the purposes of this rule.

(4) Attorney fees may only be authorized when a Request for Reconsideration is submitted by an attorney representing a worker or the attorney provides documentation of representation, and a valid signed retainer agreement has been filed with the director. The reconsideration order will order the insurer to pay the attorney 10 percent out of any additional compensation awarded but not more than the maximum attorney fee allowed in OAR 438-015-0040(1) and (2) and OAR 438-015-0045, effective February 1, 1999. "Additional compensation" includes an increase in a permanent or temporary disability award.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.268

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 11-1995(Temp), f. & cert. ef. 8-23-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 2-1999(Temp), f. 1-14-99, cert. ef. 2-1-99 thru 7-30-99; WCD 8-1999, f. & cert. ef. 4-28-99; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0185

Reconsideration: Settlements and Withdrawals

(1) Contested matters arising out of a claim closure may be resolved by mutual agreement of the parties at any time after the claim has been closed under ORS 656.268 but before that claim closure has become final by operation of law. If the parties have reached such an agreement prior to the completion of the reconsideration proceeding, the parties must submit the stipulation agreement to the director for approval as part of the reconsideration proceeding. The stipulation submitted for review at the reconsideration proceeding must:

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(a) Address only issues that pertain to a claim closure and cannot include any issues of compensability;

(b) List the body part(s) for which any award is made and recite all disability awarded in both degrees and percent of loss as appropriate based on date of injury when permanent partial disability is part of the stipulated agreement. In the event there is any inconsistency between the stated degrees and percent of loss awarded in any stipulated agreement for claims with dates of injury prior to January 1, 2005, the stated percent of loss will control.

(2) The director will review the stipulation and issue an order approving or denying the stipulation within 18 working days from the director's receipt of the stipulation. Stipulations approved by the director are not appealable.

(3) When the stipulated agreement does not expressly resolve all issues relating to the claim closure, the Order on Reconsideration will include the stipulation, as well as a substantial determination of all remaining issues. In these claims, the 18 working day time frame may be postponed in the same manner as any reconsideration proceeding.

(4) If the stipulation is not approved, the reconsideration proceeding will be postponed to allow the parties to:

(a) Address the disapproval, and/or

(b) Request that the director issue an Order on Reconsideration addressing the substantive issues.

(5) When the parties desire to enter into a stipulated agreement to resolve disputed issues relating to the claim closure but are unable to reach an agreement, the parties may request the assistance of the director to mediate an agreement.

(6) When the parties desire to enter into a stipulated agreement that addresses all matters being reconsidered as well as issues not before the reconsideration proceeding, and the parties do not want a reconsideration on the merits of the claim closure, they may advise the director of their resolution and request the director enter an Order on Reconsideration affirming the Notice of Closure. The request for an affirming order must be made prior to the date an Order on Reconsideration is issued and in accordance with the following procedure.

(a) A written request for an affirming reconsideration order must:

(A) Be made by certified mail;

(B) Be signed by both parties or their representatives;

(C) State that the parties waive their right to an arbiter review and that all matters subject to the mandatory reconsideration process have been resolved; and

(D) Be accompanied by a copy of the proposed stipulated agreement.

(b) After the affirming Order on Reconsideration has been issued, the parties will submit their stipulation to a referee of the Hearings Division, Workers' Compensation Board, for approval in accordance with the provisions of ORS 656.289 and the Board's rules of practice and procedure.

(c) An Order on Reconsideration issued under this rule is final and is subject to review under ORS 656.283.

(d) This provision does not apply to Claims Disposition Agreements filed under ORS 656.236.

(7) A worker requesting a reconsideration may withdraw the request for reconsideration without agreement of the other parties only if:

(a) No additional information has been submitted by the other parties;

(b) No medical arbiter exam has occurred; and

(c) The insurer has not requested reconsideration under OAR 436-030-0145.

(8) Notwithstanding (7) above, if additional information has been submitted by the other party(ies), a medical arbiter exam has occurred or the insurer has requested reconsideration, the reconsideration request will not be dismissed unless all parties agree to the withdrawal.

(9) If the insurer has requested reconsideration, either the worker or the insurer may initiate the withdrawal request but both must agree to the withdrawal.

(10) The director will issue an order dismissing the reconsideration under section (7), (8), and (9) of this rule, when appropriate.

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313

Stats. Implemented: ORS 656.268(6) & 1999 OL Ch. 313

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-030-0580

Penalties and Sanctions

(1) Under ORS 656.745, the director or designee may assess a civil penalty against an employer or insurer who fails to comply with the rules

and orders of the director regarding reports or other requirements necessary to carry out the purposes of the Workers' Compensation Law.

(2) An insurer or medical service provider failing to meet the requirements set forth in these rules may be assessed a civil penalty.

(3) Under OAR 436-010-0340, the director may impose sanctions for any medical service provider where the insurer can provide sufficient documentation to substantiate lack of cooperation. The medical service provider will be sent a warning letter about the reporting requirements and possible penalties. Failure by the medical service provider to submit the requested information within the specified period may result in civil penalties.

(4) Sufficient documentation to substantiate lack of cooperation by the medical service provider includes:

(a) Copies of letters to the medical service provider;

(b) Memos to the claim file of follow-up phone calls and/or the lack of response;

(c) Letters from the medical service provider indicating a lack of cooperation; or

(d) Medical reports received by the insurer, after adequate instruction by the insurer or the director, which do not supply the requested information or which supply information that is not consistent with the Disability Rating Standards in OAR 436-035.

(5) In arriving at the amount of penalty, the director or designee may assess a penalty of up to \$2,000 for each violation or \$10,000 in the aggregate for all violations in any three-month period.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999

Stats. Implemented: ORS 656.268, 656.726, 656.745, OL Ch. 332 1995 & Ch. 313 1999

Hist.: WCD 13-1987, f. 12-17-87, ef. 1-1-88; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0002

Purpose of Rules

These rules establish standards for rating permanent disability under the Workers' Compensation Act. These standards are written to reflect the criteria for rating outlined in ORS Chapter 656 and assign values for disabilities that are applied consistently at all levels of the Workers' Compensation award and appeal process.

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 656.005, 656.007, 656.012, 656.210, 656.212, 656.214, 656.245, 656.262, 656.268, 656.273, 656.726, 656.790, 656.225

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 18-1990 (Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0003

Applicability of Rules

(1) These rules apply to the rating of permanent disability under Chapter 656 and to all claims closed on or after the effective date of these rules for workers medically stationary on or after June 7, 1995. Except for provisions in 1995 Or. Law, Chapter 332, for workers medically stationary prior to June 7, 1995, but on or after July 1, 1990, Administrative Order 93-056 applies to the rating of permanent disability. Except for provisions in 1995 Or. Law, Chapter 332, for workers medically stationary prior to July 1, 1990, Administrative Order 6-1988 applies to the rating of permanent disability.

(2) Except for provisions in 1995 Or. Law, Chapter 332, for workers medically stationary after July 1, 1990 and a request for reconsideration has been made under ORS 656.268, disability rating standards in effect on the date of issuance of the Determination Order or Notice of Closure and any relevant temporary rules adopted under ORS 656.726(4)(f) (D) apply.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268, 656.273, 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 1-1989(Temp), f. & cert. ef. 1-24-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1991(Temp), f. 9-13-91, cert. ef. 10-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 10-1992(Temp), f. & cert. ef. 6-1-92; WCD 15-1992, f. 11-20-92, cert. ef. 11-27-92; WCD 3-1993(Temp), f. & cert. ef. 6-17-93; WCD 13-1995(Temp), f. & cert. ef. 9-21-95; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 19-1996(Temp), f. & cert. ef. 8-19-1996; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0005

Definitions

As used in OAR 436-035-0001 through 436-035-0500, unless the context requires otherwise:

(1) "Activities of Daily Living (ADL)" include, but are not limited to, the following personal activities required by an individual for continued

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well-being: eating/nutrition; self-care and personal hygiene; communication and cognitive functions; and physical activity, e.g., standing, walking, kneeling, hand functions, etc.

(2) "Ankylosis" means a bony fusion, fibrous union or arthrodesis of a joint. Ankylosis does not include pseudarthrosis or articular arthropathies.

(3) "Combined condition" means a preexisting condition and a compensable condition contribute to the worker's overall disability or need for treatment.

(4) "Date of Issuance", for purposes of these rules, means the mailing date of a Notice of Closure, Determination Order or Order on Reconsideration under ORS 656.268 and 656.283(7).

(5) "Dictionary of Occupational Titles" or (DOT) means the publication of the same name by the U.S. Department of Labor, Fourth Edition Revised 1991.

(6) "Direct medical sequela" means a condition which originates or stems from the compensable injury or disease that is clearly established medically. Disability from direct medical sequelae is rated under these rules and ORS 656.268(14). For example: The accepted condition is low back strain with herniated disc at L4-5. The worker develops permanent weakness in the leg and foot due to radiculopathy. The weakness is considered a "direct medical sequela" of the herniated disc.

(7) "Earning Capacity" means impairment as modified by age, education and adaptability.

(8) "Impairment" means a compensable, permanent loss of use or function of a body part/system related to the compensable condition, determined under these rules, OAR 436-010-0280 and ORS 656.726(4)(f)(D).

(9) "Irreversible findings" for the purposes of these rules are:

ARM
Arm angulation
Radial head resection
Shortening
EYE
Enucleation
Lens implant
Lensectomy
GONADAL
Loss of gonads resulting in absence of, or an abnormally high, hormone level
HAND
Carpal bone fusion
Carpal bone removal
KIDNEY
Nephrectomy
LEG
Knee angulation
Length discrepancy
Meniscectomy
Patellectomy
LUNG
Lobectomy
SHOULDER
Acromionectomy
Clavicle resection
SPINE
Compression fractures
Diskectomy
Laminectomy
SPLEEN
Splenectomy
URINARY TRACT DIVERSION
Cutaneous ureterostomy without intubation
Nephrostomy or intubated ureterostomy
Uretero-Intestinal
OTHER
Amputations/resections
Ankylosed/fused joints
Displaced pelvic fracture ("healed" with displacement)
Loss of opposition
Organ transplants (heart, lung, liver, kidney)
Prosthetic joint replacements

(10) "Medical arbiter" means a physician(s) under ORS 656.005(12)(b)(A) appointed by the Director under OAR 436-010-0330.

(11) "Offset" means to reduce a current permanent partial disability award, or portions thereof, by a prior Oregon workers' compensation permanent partial disability award from a different claim.

(12) "Physician's release" means written notification, provided by the attending physician to the worker and the worker's employer or insurer, releasing the worker to work and describing any limitations the worker has.

(13) "Preponderance of medical evidence" or "opinion" does not necessarily mean the opinion supported by the greater number of documents or greater number of concurrences; rather it means the more probative and more reliable medical opinion based upon factors including, but not limited to, one or more of the following:

- (a) The most accurate history,
- (b) The most objective findings,
- (c) Sound medical principles or

(d) Clear and concise reasoning.

(14) "Redetermination" means a reevaluation of disability under ORS 656.267, 656.268(9), 656.273 and 656.325.

(15) "Regular work" means the job the worker held at the time of injury.

(16) "Scheduled disability" means a compensable permanent loss of use or function which results from injuries to those body parts listed in ORS 656.214(3)(a) through (5).

(17) "Social-vocational factors" means age, education and adaptability factors under ORS 656.726(4)(f)(C).

(18) "Superimposed condition" means a condition that arises after the compensable injury or disease which contributes to the worker's overall disability or need for treatment but is not the result of the original injury or disease. Disability from a superimposed condition is not rated. For example: The accepted condition is a low back strain. Two months after the injury, the worker becomes pregnant (non-work related). The pregnancy is considered a "superimposed condition."

(19) "Unscheduled disability" means a compensable condition that results in a permanent loss of earning capacity as described in these rules and arising from those losses under OAR 436-035-0330 through 436-035-0450.

(20) "Work Disability", for the purposes of determining permanent disability, means the separate factoring of impairment as modified by age, education, and adaptability to perform the job at which the worker was injured.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & ORS 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0007

General Principles

(1) Except for OAR 436-035-0014, a worker is entitled to a value under these rules only for those findings of impairment that are permanent and were caused by the accepted compensable condition and direct medical sequela. Unrelated or noncompensable impairment findings are excluded and are not valued under these rules. Permanent total disability is determined under OAR 436-030-0055.

(2) Permanent disability is rated on the permanent loss of use or function of a body part, area, or system due to a compensable, consequential and/or combined condition and any direct medical sequela, and may be modified by the factors of age, education and adaptability. Except impairment determined under ORS 656.726(4)(f)(D), the losses, as defined and used in these standards, shall be the sole criteria for the rating of permanent disability under these rules.

(3) When newly accepted or omitted conditions have been added to the accepted conditions since the last arrangement of compensation, the extent of permanent disability is to be redetermined. Impairment values for conditions which are not actually worsened, unchanged, or improved are not redetermined and retain the same impairment values established at the last arrangement of compensation.

(4) Where a worker has a prior award of permanent disability under Oregon workers' compensation law, disability is determined under OAR 436-035-0015 (offset), rather than OAR 436-035-0013, for purposes of determining disability only as it pertains to multiple Oregon workers' compensation claims.

(5) Impairment is established based on objective findings of the attending physician under ORS 656.245(2)(b)(B) and OAR 436-010-0280. On reconsideration, where a medical arbiter is used, impairment is established based on objective findings of the medical arbiter, except where a preponderance of the medical evidence demonstrates that different findings by the attending physician are more accurate and should be used.

(6) Objective findings made by a consulting physician or other medical providers (e.g. occupational or physical therapists) at the time of closure may be used to determine impairment if the worker's attending physician concurs with the findings as prescribed in OAR 436-010-0280.

(7) If there is no measurable impairment under these rules, no award of permanent partial disability is allowed.

(8) Pain is considered in the impairment values in these rules to the extent that it results in measurable impairment. If there is no measurable impairment, no award of permanent disability is allowed for pain. To the extent that pain results in disability greater than that evidenced by the measurable impairment, including the disability due to expected waxing and

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waning of the worker's condition, this loss of earning capacity is considered and valued under OAR 436-035-0012 and is included in the adaptability factor.

(9) When a joint is ankylosed in more than one direction or plane, the largest ankylosis value is used for rating the loss or only one of the values is used if they are identical. This value is granted in lieu of all other range of motion or ankylosis values for that joint.

(10) Except as otherwise required by these rules, methods used by the examiner for making findings of impairment are the methods described in the AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed., Rev. 1990, and are reported by the physician in the form and format required by these rules.

(11) Range of motion is measured using the goniometer as described in the AMA Guides to the Evaluation of Permanent Impairment, 3rd Edition (Revised), 1990, except when measuring spinal range of motion; then an inclinometer must be used.

(12) Validity is established for findings of impairment according to the criteria noted in the AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed., Rev., 1990, unless the validity criteria for a particular finding is not addressed in this reference, is not pertinent to these rules, or is determined by physician opinion to be medically inappropriate for a particular worker. Upon examination, findings of impairment which are determined to be ratable under these rules are rated unless the physician determines the findings are invalid and provides a written opinion, based on sound medical principles, explaining why the findings are invalid. When findings are determined invalid, the findings receive a value of zero. If the validity criteria are not met but the physician determines the findings are valid, the physician must provide a written rationale, based on sound medical principles, explaining why the findings are valid. For purposes of this rule, the straight leg raising validity test (SLR) is not the sole criterion used to invalidate lumbar range of motion findings.

(13) Except for contralateral comparison determinations under OAR 436-035-0011(3), loss of opposition determination under OAR 436-035-0040, averaging muscle values under OAR 436-035-0011(8), and impairment determined under ORS 656.726(4)(f)(D), only impairment values listed in these rules are to be used in determining impairment. Prorating or interpolating between the listed values is not allowed. For findings that fall between the listed impairment values, the next higher appropriate value is used for rating.

(14) Values found in these rules consider the loss of use or function and/or loss of earning capacity directly associated with the compensable condition. When a worker's impairment findings do not meet the threshold (minimum) findings established in these rules, no value is granted.

(a) Not all surgical procedures result in loss of use or function and/or loss of earning capacity. Some surgical procedures improve the use and function of body parts, areas or systems or ultimately may contribute to an increase in earning capacity. Accordingly, not all surgical procedures receive a value under these rules.

(b) Not all medical conditions or diagnoses result in loss of use or function and/or loss of earning capacity. Accordingly, not all medical conditions or diagnoses receive a value under these rules.

(15) Waxing and waning of signs and/or symptoms related to a worker's compensable medical condition is already contemplated in the values provided in these rules. There is no additional value granted for the varying extent of waxing and waning of the condition. Waxing and waning means there is not an actual worsening of the condition under ORS 656.273.

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273, 656.726(3)

Hist.: WCD 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0005, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; Renumbered from 436-030-0120; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0008

Calculating Disability Benefits (Dates of Injury prior to 1/1/2005)

(1) Scheduled disability is rated on the permanent loss of use or function of a body part due to an accepted compensable, consequential and/or combined condition, or any direct medical sequelae. Except impairment determined under ORS 656.726(4)(f)(D), the losses, as defined and used in these standards, are the sole criteria for the rating of permanent scheduled disability. To calculate the scheduled impairment benefit use the following steps.

(a) Determine the percent of scheduled impairment using the impairment values found in OAR 436-035-0019 through 436-035-0260, and the applicable procedures within these rules.

(b) Multiply the result in (a) by the maximum degrees, under ORS 656.214, for the injured body part.

(c) Multiply the result from (b) by the statutory dollar rate under ORS 656.214 and illustrated in Bulletin 111.

(d) The result from (c) is the scheduled impairment benefit. If there are multiple extremities with impairment then each is determined and awarded separately, including hearing and vision loss.

Example: Scheduled Impairment Benefit

0.12 Scheduled impairment percent (12%)
x 192 Maximum degrees for the body part
= 23.04 Degrees of scheduled disability
x \$559.00 Statutory dollar rate per degree
= \$12,879.36 Scheduled impairment benefit

(2) Unscheduled disability is rated on the permanent loss of use or function of a body part, area, or system and due to an accepted compensable, consequential and/or combined condition, and any direct medical sequelae, as modified by the factors of age, education, and adaptability. Except for impairment determined under ORS 656.726(4)(f)(D), the losses, as defined and used in these standards, are the sole criteria for the rating of permanent unscheduled disability.

(a) To calculate the unscheduled impairment benefit when the worker returns or is released to regular work according to OAR 436-035-0009(3), use the following steps.

(A) Determine the percent of unscheduled impairment using the impairment values found in OAR 436-035-0019 and 436-035-0330 through 436-035-0450, and the applicable procedures within these rules.

(B) Multiply the result in (A) by the maximum degrees for unscheduled impairment.

(C) Multiply the result in (B) by the statutory dollar rate under ORS 656.214 and illustrated in Bulletin 111.

(D) The result in (C) is the unscheduled impairment benefit.

Example: Unscheduled Impairment Benefit (worker returns/is released to regular work)

0.12 Unscheduled impairment percent (12%)
x 320 Maximum degrees for unscheduled impairment
= 38.40 Degrees of unscheduled disability
x \$184.00 Statutory dollar rate per degree
= \$7,065.60 Unscheduled impairment benefit

(b) To calculate the unscheduled disability benefit when the worker does not return or is not released to regular work according to OAR 436-035-0009(3), use the following steps.

(A) Determine the percent of unscheduled impairment using the impairment values found in OAR 436-035-0019 and 436-035-0330 through 436-035-0450, and the applicable procedures within these rules.

(B) Determine the social-vocational factor, under OAR 436-035-0012, and add it to (A).

(C) Multiply the result from (B) by the maximum degrees for unscheduled impairment.

(D) Multiply the result from (C) by the statutory dollar rate for unscheduled impairment under ORS 656.214.

(E) The result from (D) is the unscheduled impairment benefit

Example: Unscheduled Impairment Benefit (worker does not return/released to regular work)

0.12 Unscheduled impairment percentage (12%)
+ 6% Social-Vocational factor
= 18% Unscheduled impairment
x 320 Maximum degrees for unscheduled impairment
= 57.6 Degrees of unscheduled disability
x \$184.00 Statutory dollar rate per degree
= \$10,598.40 Unscheduled impairment benefit

[ED. NOTE: Tables & Examples referenced are available from the agency.]

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726(3)

Hist.: WCD 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0005, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; Renumbered from 436-030-0120; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0009

Calculating Disability Benefits (Date of Injury on or after 1/1/2005)

(1) Permanent impairment is expressed as a percent of the whole person and the impairment value will not exceed 100% of the whole person.

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(2) If the impairment results from injury to more than one extremity, area, or system, the whole person values for each are combined (not added) to arrive at a final impairment value.

(3) Only permanent impairment is rated for those workers who:

(a) Return to and are working at their regular work on the date of issuance; or

(b) The attending physician releases the worker to regular work and the work is available, but the worker fails or refuses to return to that job; or

(c) The attending physician releases the worker to regular work, but the worker's employment is terminated for cause unrelated to the injury.

(4) To calculate the impairment benefit due the worker use the following steps:

(a) Determine the percent of impairment according to these rules.

(b) Multiply the percent of impairment determined in (a) by 100 per ORS 656.214.

(c) Multiply the result from (b) by the state's average weekly wage at the time of injury as defined by ORS 656.005 and illustrated in Bulletin 111.

(d) The result in (c) is the total impairment benefit, which is paid regardless of the worker's return to work status. In the absence of social-vocational factoring as a result of the worker's return to work status, this is also the permanent partial disability award. [Example not included. See ED. NOTE.]

(5) If the worker has not met the return or release to regular work criteria in section (3) of this rule, the worker receives both an impairment and work disability benefit, and the total permanent partial disability award is calculated as follows.

(a) Determine the percent of impairment as a whole person (WP) value according to these rules.

(b) Determine the social-vocational factor, under OAR 436-035-0012, and add it to (a).

(c) Multiply the result from (b) by 150 per ORS 656.214.

(d) Multiply the result from (c) by worker's average weekly wage as calculated under ORS 656.210(2). The worker's average weekly wage can be no less than 50% and no more than 133% of the state's average weekly wage at the time of injury when determining work disability benefits.

(e) Add the result from (d) to the impairment benefit value, which would be calculated using the method in section (4) of this rule.

(f) The result from (e) is the permanent partial disability award that would be due the worker. [Example not included. See ED. NOTE.]

[ED. NOTE: Tables & Examples referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0011

Determining Percent of Impairment

(1) The total impairment rating for a body part cannot be more than 100% of the body part.

(2) When rating disability the movement in a joint is measured in active degrees of motion. Impairment findings describing lost ranges of motion are converted to retained ranges of motion by subtracting the measured loss from the normal of full ranges established in these rules.

(a) Range of motion values for each direction in a single joint are first added, then combined with other impairment findings. [Example not included. See ED. NOTE.]

(b) Range of motion values for multiple joints in a single body part (e.g. of a finger) are determined by finding the range of motion values for each joint (e.g. MCP, PIP, DIP) and combining those values for an overall loss of range of motion value for that body part. This value is then combined with other impairment values.

(3) The range of motion or laxity (instability) of an injured joint is compared to and valued proportionately to the contralateral joint except when the contralateral joint has a history of injury or disease or when either joint's range of motion is zero degrees or is ankylosed. The strength of an injured extremity, shoulder, or hip is compared to and valued proportionately to the contralateral body part except when the contralateral body part has a history of injury or disease. [Example not included. See ED. NOTE.]

(a) If the motion of the injured or contralateral joint exceeds the values for ranges of motion established under these rules, the values established under these rules are maximums used to establish impairment.

(b) When the contralateral joint has a history of injury or disease, the findings of the injured joint are valued based upon the values established under these rules.

(4) Specific impairment findings (e.g., weakness, reduced range of motion, etc.) are awarded in whole number increments. This may require

rounding non-whole number percentages and contralateral comparison degrees of motion for given impairment findings before combining with any other applicable impairment value. The exception is for hearing and vision values which are awarded in increments of hundredths.

(a) Except for subsection (b) of this section, before combining, the sum of the impairment values is rounded to the nearest whole number. For the decimal portion of the number, point 5 and above is rounded up, below point 5 is rounded down. [Example not included. See ED. NOTE.]

(b) When the sum of impairment values is greater than zero and less than 0.5, a value of 1% will be granted. [Example not included. See ED. NOTE.]

(5) If there are impairment findings in two or more body parts in an extremity, the total impairment findings in the distal body part are converted to a value in the most proximal body part under the applicable conversion chart in these rules. This conversion is done prior to combining impairment values for the most proximal body part. [Example not included. See ED. NOTE.]

(6) Except as otherwise noted in these rules, impairment values to a given body part, area, or system are combined according to the method outlined on pages 254-256 by the AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. (Revised), 1990, as follows:

(a) The combined value is obtained by inserting the values for A and B into the formula $A + B \cdot (1.0 - A)$. The larger of the two numbers is A and the smaller is B. The whole number percentages of impairment are converted to their decimal equivalents (e.g. 12% converts to .12; 3% converts to .03). The resulting percentage is rounded to a whole number as determined in section (1) of this rule. Upon combining the largest two percentages, the resulting percentage is combined with any lesser percentage(s) in descending order using the same formula until all percentages have been combined prior to performing further computations. After the calculations are completed, the decimal result is then converted back to a percentage equivalent. [Example not included. See ED. NOTE.]

(b) Impairment values for a given body part, area, or system must be combined before combining with other impairment values. If the given body part is an upper or lower extremity, ear(s), or eye(s) then the impairment value is to be converted to a whole person value before combining with other impairment values, except when the date of injury for the claim is prior to January 1, 2005. [Example not included. See ED. NOTE.]

(7) To determine impairment due to loss of strength, the 0 to 5 international grading system and 0 to 5 method as noted in the AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. Revised, 1990 are used. The grade of strength is reported by the physician and assigned a percentage value from the table in subsection (a) of this section. The impairment value of the involved nerve is multiplied by this value. Grades identified as "++" or "--" are considered either a "+" or "-", respectively.

(a) The grading is valued as follows: [Grading not included. See ED. NOTE.]

(b) When a physician reports a loss of strength with muscle action (e.g. flexion, extension, etc.) or when only the affected muscle(s) is identified, current anatomy texts or the **AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. (Revised), 1990, the 4th Ed., 1993, or the 5th Ed., 2001**, may be referenced to identify the specific muscle(s), peripheral nerve(s) or spinal nerve root(s) involved.

(8) For muscles supplied (innervated) by the same nerve, the loss of strength is determined by averaging the percentages of impairment for each involved muscle to arrive at a single percentage of impairment for the involved nerve. [Example not included. See ED. NOTE.]

(9) When multiple nerves have impairment findings found under these rules, these impairment values are first combined for an overall loss of strength value before combining with other impairment values.

[ED. NOTE: Tables & Examples referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0012

Social-Vocational Factors (Age/Education/Adaptability)

(1) When a worker is unable to return to regular work, under ORS 656.726(4), the factors of age, education, and adaptability are determined under this rule and the final result is the social-vocational factor which is used in the calculation of permanent disability benefits. When the date of injury is prior to January 1, 2005, the worker must have ratable uncheduled impairment under OAR 436-035-0019 or 436-035-0330 through 436-035-0450.

(2) The age factor is based on the worker's age at the date of issuance and has a value of 0 or +1.

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- (a) Workers age 40 and above receive a value of + 1.
- (b) Workers less than 40 years old receive a value of 0.
- (3) The education factor is based on the worker's formal education and Specific Vocational Preparation (SVP) time at the date of issuance. These two values are added to give a value from 0 to +5.
- (4) A value of a worker's formal education is given as follows:
- (a) Workers who have earned or acquired a high school diploma or general equivalency diploma (GED) are given a neutral value of 0. For purposes of this section, a GED is a certificate issued by any certifying authority or its equivalent.
- (b) Workers who have not earned or acquired a high school diploma or a GED certificate are given a value of +1.
- (5) A value for a worker's Specific Vocational Preparation (SVP) time is given based on the job(s) successfully performed by the worker in the five (5) years prior to the date of issuance. The SVP value is determined by identifying these jobs and locating their SVP in the Dictionary of Occupational Titles (DOT) or a specific job analysis. The job with the highest SVP the worker has met is used to assign a value according to the following table: [Table not included. See ED. NOTE.]
- (a) For the purposes of this rule, SVP is defined as the amount of time required by a typical worker to acquire the knowledge, skills and abilities needed to perform a specific job.
- (b) When a job is most accurately described by a combination of DOT codes, use all applicable DOT codes. If a preponderance of evidence establishes that the requirements of a specific job differ from the DOT description(s), a specific job analysis which includes the SVP time requirement may be substituted for the DOT description(s) if it more accurately describes the job.
- (c) A worker is presumed to have met the SVP training time after completing employment with one or more employers in that job classification for the time period specified in the table.
- (d) A worker meets the SVP for a job after successfully completing an authorized training program, on-the-job training, vocational training, or apprentice training for that job classification. College training organized around a specific vocational objective is considered specific vocational training.
- (e) For those workers who have not met the specific vocational preparation training time for any job, a value of +4 is granted.
- (6) The values obtained in sections (4) and (5) of this rule are added to arrive at a final value for the education factor.
- (7) The adaptability factor is a comparison of the worker's Base Functional Capacity (BFC) to their maximum Residual Functional Capacity (RFC). The adaptability factor has a value from +1 to +7.
- (8) For purposes of determining adaptability the following definitions apply:
- (a) "Base Functional Capacity" (BFC) means an individual's demonstrated physical capacity before the date of injury or disease.
- (b) "Residual Functional Capacity" (RFC) means an individual's remaining ability to perform work-related activities despite medically determinable impairment resulting from the accepted compensable condition.
- (c) "Sedentary restricted" means the worker only has the ability to carry or lift docket, ledgers, small tools and other items weighing less than 10 pounds. A worker is also sedentary restricted if the worker can perform the full range of sedentary activities, but with restrictions.
- (d) "Sedentary (S)" means the worker has the ability to occasionally lift or carry docket, ledgers, small tools and other items weighing 10 pounds.
- (e) "Sedentary/Light (S/L)" means the worker has the ability to do more than sedentary activities, but less than the full range of light activities. A worker is also sedentary/light if the worker can perform the full range of light activities, but with restrictions.
- (f) "Light (L)" means the worker has the ability to occasionally lift 20 pounds and can frequently lift or carry objects weighing up to 10 pounds.
- (g) "Medium/Light (M/L)" means the worker has the ability to do more than light activities, but less than the full range of medium activities. A worker is also medium/light if the worker can perform the full range of medium activities, but with restrictions.
- (h) "Medium (M)" means the worker can occasionally lift 50 pounds and can lift or carry objects weighing up to 25 pounds frequently.
- (i) "Medium/Heavy (M/H)" means the worker has the ability to do more than medium activities, but less than the full range of heavy activities. A worker is also medium/heavy if the worker can perform the full range of heavy activities, but with restrictions.
- (j) "Heavy (H)" means the worker has the ability to occasionally lift 100 pounds and the ability to frequently lift or carry objects weighing 50 pounds.
- (k) "Very Heavy (V/H)" means the worker has the ability to occasionally lift in excess of 100 pounds and the ability to frequently lift or carry objects weighing more than 50 pounds.
- (l) "Restrictions" means that, by a preponderance of medical opinion, the worker is permanently limited by:
- (A) Sitting, standing, or walking less than two hours at a time; or
- (B) Precluded from working the same number of hours as were worked at the time of injury or eight hours per day, whichever is less; or
- (C) From frequently performing at least one of the following activities: stooping/bending, crouching, crawling, kneeling, twisting, climbing, balancing, reaching, or pushing/pulling.
- (m) "Occasionally" means the activity or condition exists up to 1/3 of the time.
- (n) "Frequently" means the activity or condition exists up to 2/3 of the time.
- (o) "Constantly" means the activity or condition exists 2/3 or more of the time.
- (9) Base Functional Capacity (BFC) is established by utilizing the following classifications: sedentary (S), light (L), medium (M), heavy (H), and very heavy (VH) as defined in section (8) of this rule. Base Functional Capacity is the most current of:
- (a) The highest strength category of the job(s) successfully performed by the worker in the five (5) years prior to the date of injury. The strength categories are found in the Dictionary of Occupational Titles (DOT). When a job is most accurately described by a combination of DOT codes, use all applicable DOT codes. If a preponderance of evidence establishes that the requirements of a specific job differ from the DOT descriptions, a specific job analysis which includes the strength requirements may be substituted for the DOT description(s) if it most accurately describes the job. If a job analysis determines that the strength requirements are in between strength categories then use the higher strength category; or
- (b) A second-level physical capacity evaluation as defined in OAR 436-010-0005 and 436-009-0070(4)(b) performed prior to the date of the on-the-job injury; or
- (c) For those workers who do not meet the requirements under section (5) of this rule, and who have not had a second-level physical capacity evaluation performed prior to the on-the-job injury or disease, their prior strength is based on the worker's job at the time of injury.
- (d) Where a worker's highest prior strength has been reduced as a result of an injury or condition which is not an accepted Oregon workers' compensation claim the Base Functional Capacity is the highest of:
- (A) The job at injury; or
- (B) A second-level physical capacities evaluation as defined in OAR 436-010-0005 and 436-009-0070(4)(b) performed after the injury or condition which was not an accepted Oregon workers' compensation claim but before the current work related injury.
- (10) Residual functional capacity (RFC) is established by utilizing the following classifications: restricted sedentary (RS), sedentary (S), sedentary/light (S/L), light (L), medium/light (M/L), medium (M), medium/heavy (M/H), heavy (H), and very heavy (VH) and restrictions as defined in section (8) of this rule.
- (a) Residual functional capacity is evidenced by the attending physician's release unless a preponderance of medical opinion describes a different RFC.
- (b) For the purposes of this rule, the other medical opinion must include at least a second-level physical capacity evaluation (PCE) or work capacity evaluation (WCE) as defined in OAR 436-010-0005 and 436-009-0070(4) or a medical evaluation which addresses the worker's capability for lifting, carrying, pushing/pulling, standing, walking, sitting, climbing, balancing, stooping, kneeling, crouching, crawling and reaching. If multiple levels of lifting and carrying are measured, an overall analysis of the worker's lifting and carrying abilities should be provided in order to allow an accurate determination of these abilities. Where a worker fails to cooperate or use maximal effort in the evaluation, the medical opinion of the evaluator may establish the worker's likely RFC had the worker cooperated and used maximal effort.
- (11) In comparing the worker's Base Functional Capacity (BFC) to the Residual Functional Capacity (RFC), the values for adaptability to perform a given job are as follows:
- (12) For those workers determined by these rules to have an RFC established between two categories and also have restrictions, the next

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lower classification is used. (For example, if a worker's RFC is established at S/L but also has restrictions, use S).

(13) When the date of injury is on or after January 1, 2005, adaptability is determined by applying the worker's extent of total impairment to the following adaptability scale and comparing the value from the residual functional capacity scale in section (11) of this rule and using the higher of the two values for adaptability. [Table not included. See ED. NOTE.]

(14) When the date of injury is prior to January 1, 2005, for those workers who have ratable uncheduled impairment found in rules OAR 436-035-0019 and 436-035-0330 through 436-035-0450, adaptability is determined by applying the extent of total uncheduled impairment to the adaptability scale in section (13) of this rule and the residual functional capacity scale in section (11) of this rule and using the higher of the two values for adaptability.

(15) To determine the social-vocational factor value, which represents the total calculation of age, education, and adaptability complete the following steps.

(a) Determine the appropriate value for the age factor using section (2) of this rule.

(b) Determine the appropriate value for the education factor using sections (4) and (5) of this rule.

(c) Add age and education values together.

(d) Determine the appropriate value for the adaptability factor using sections (7) through (14) of this rule.

(e) Multiply the result from step (c) by the value from step (d) for the social-vocational factor value.

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

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0013

Apportionment

Except as provided in section (4) of this section, where a worker has a superimposed or unrelated condition, only disability due to the compensable condition is rated, provided the compensable condition is medically stationary. Then, apportionment is appropriate. Disability is determined as follows:

(1) The physician describes the current total overall findings of impairment. The physician describes the portion of those findings that are due to the compensable condition. Only the portion of those impairment findings that are due to the compensable condition receive a value. [Example not included. See ED. NOTE.]

(2) In claims where a worker's adaptability factor is determined under OAR 436-035-0012 and is affected by the compensable condition, the physician describes any loss of residual functional capacity due only to the compensable condition and only that portion receives a value.

(3) For conditions other than those noted in section (2) of this rule, adaptability is determined under OAR 436-035-0012 based on the physician's description of the portion of impairment due only to the compensable condition.

(4) Workers with an irreversible finding of impairment due to the compensable condition receive the full value awarded in these rules for the irreversible finding. This value is combined with impairment noted in section (1) of this section. [Example not included. See ED. NOTE.]

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

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0014

Preexisting Condition/Major Contributing Cause

(1) Where a worker has a preexisting condition, the following applies:

(a) For purposes of these rules only, a prior Oregon workers' compensation claim is not considered a preexisting condition.

(b) Under ORS 656.225, disability caused solely by a worker's preexisting condition is rated completely if work conditions or events were the major contributing cause of a pathological worsening of the preexisting physical condition or an actual worsening of the preexisting mental disorder. Apportionment of disability is not appropriate.

(c) Where a worker's compensable condition combines with a preexisting condition, under ORS 656.005(7), the current disability resulting from the total accepted combined condition is rated under these rules as long as the compensable condition remains the major contributing cause of the accepted combined condition (e.g., a major contributing cause denial has not been issued under ORS 656.262(7)(b)). Apportionment of disability is not appropriate. [Example not included. See ED. NOTE.]

(2) If the worker is not medically stationary, but otherwise qualifies for closure under ORS 656.268 (e.g., when a major contributing cause denial has been issued), the following applies:

(a) When the worker's compensable condition is not medically stationary and, upon examination, the findings of impairment related to the compensable condition would not overlap the findings of impairment related to any combined or superimposed condition, the following applies:

(A) Impairment is established based on an examination in which the physician first describes the current findings regarding impairment due to the worker's compensable condition. Then the physician estimates the likely future portion of those findings that would be present at the time the worker's condition is anticipated to become medically stationary. The value of the current findings is adjusted accordingly and only the portion of those current findings that are anticipated at the time of medically stationary status receives a value.

(B) The physician will estimate the worker's likely future residual functional capacity that would be due only to the compensable condition at the time the condition is anticipated to become medically stationary. Only the portion due to the compensable condition at the time of medically stationary status receives a value.

(C) For dates of injury prior to January 1, 2005, when the compensable condition is to the shoulder, hip, head, neck, or torso, the physician estimates the worker's likely future residual functional capacity, under OAR 436-035-0012(8)(c) through (o), that would be due only to the compensable condition at the time the condition is anticipated to become medically stationary. Only the portion due to the compensable condition at the time of medically stationary status receives a value. For other uncheduled compensable conditions, adaptability is determined under OAR 436-035-0012 based on the physician's estimate of likely impairment.

(b) When the worker's overall condition is not medically stationary and, upon examination, the findings of impairment related to the compensable condition would overlap the findings of impairment related to any combined or superimposed condition, the following applies:

(A) Impairment is established based on an examination in which the physician describes current overall findings regarding impairment considering the worker's overall condition. The physician then estimates the likely future portion of those findings that would be present at the time the worker's condition is anticipated to become medically stationary. Next, the physician estimates the portion of those findings that would be due only to the compensable condition. The current overall value of the findings of impairment is adjusted accordingly and only the portion of those impairment findings that are anticipated at the time of medically stationary status and are due to the compensable condition receive a value. [Example not included. See ED. NOTE.]

(B) The physician will estimate the worker's likely future residual functional capacity under OAR 436-035-0012(8)(c) through (o), that would be due only to the compensable condition at the time medically stationary status is anticipated. Only the portion due to the compensable condition at the time of medically stationary status will receive a value.

(C) For dates of injury prior to January 1, 2005, to estimate an adaptability factor when the compensable condition is to the shoulder, hip, head, neck, or torso, the physician estimates the worker's likely future residual functional capacity under OAR 436-035-0012(8)(c) through (o), that would be due only to the compensable condition at the time medically stationary status is anticipated. Only the portion due to the compensable condition at the time of medically stationary status receives a value. For other uncheduled compensable conditions, adaptability shall be determined under OAR 436-035-0012 based on the physician's estimated likely impairment. [Example not included. See ED. NOTE.]

(c) Workers with an irreversible finding of impairment due to the compensable condition receive the full value awarded in these rules for the irreversible finding. This value is then combined with the portion of impairment findings that are anticipated at the time of medically stationary status and due to the compensable condition which are rated under OAR 436-035-0013(4). [Example not included. See ED. NOTE.]

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

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0015

Offsetting Prior Awards

If a worker has a prior award of permanent disability under Oregon Workers' Compensation Law, the award is considered in subsequent claims under ORS 656.222 and 656.214. For purposes of these rules only, a prior

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Oregon workers' compensation claim is not considered a preexisting condition.

(1) Before actually offsetting the prior award, a determination is made as to whether or not there is a preponderance of medical evidence or opinion establishing that disability from the prior injury or disease was still present on the date of the injury or disease of the claim being determined. If disability from the prior injury or disease was not still present, an offset is not applied.

(2) If disability from the prior injury or disease was still present, an offset is applied. A worker is not entitled to be doubly compensated for a permanent loss of use or function or loss of earning capacity for a body part which would have resulted from the current injury or disease but which has already been produced by an earlier injury or disease and had been compensated by a prior award. Therefore, only like body parts are to be offset (e.g., left leg to left leg, low back to low back, psychological to psychological, etc.). A more distal body part award may be offset against a more proximal body part award (or vice versa) if there is a combined effect of impairment (e.g., a right forearm award may be offset against a right arm award). Where appropriate, social-vocational factors may be offset for different body parts, systems, or conditions. Only that portion of such loss which was not present prior to the current injury or disease is awarded. The following factors are considered when determining the extent of the current disability award:

(a) The worker's loss of use or function or loss of earning capacity for the current disability under the standards;

(b) The conditions or findings of impairment from the prior awards which were still present just prior to the current claim;

(c) The worker's social-vocational factors which were still present just prior to the current claim, if appropriate; and

(d) The combined effect of the prior and current injuries (the overall disability to a given body part), including the extent to which the current loss of use or function or loss of earning capacity (impairment and social-vocational factors) from a prior injury or disease was still present at the time of the current injury or disease. After considering and comparing the claims, any award of compensation in the current claim for loss of use or function or loss of earning capacity caused by the current injury or disease (which did not exist at the time of the current injury or disease and for which the worker was not previously compensated) is granted. When comparing the current disability award to the prior disability award, the current award cannot exceed the amount of compensation due the current injury or disease prior to the offset consideration.

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0016

Reopened Claim for Aggravation/Worsening

(1) When a claim has been reopened under ORS 656.273, the worker's compensable condition at the time of claim closure or reconsideration is compared with the worker's compensable condition as it existed at the time of the last award or arrangement of compensation for the compensable condition as it existed at the time of the last closure or reconsideration, whichever occurred most recently, to determine if there is an actual worsening of the worker's compensable condition.

(a) For purposes of this section, actual worsening is established by physician opinion substantiated by objective clinical findings demonstrating a worsened medical condition at the time of the current claim closure compared with the worker's medical condition at the last award or arrangement of compensation for the compensable condition as it existed at the last claim closure or reconsideration, whichever occurred most recently.

(b) When an actual worsening of the worker's compensable condition occurs, the extent of permanent disability is redetermined. When an actual worsening of the worker's compensable condition does not occur, the extent of permanent disability is not redetermined, but remains unchanged.

(c) If a claim has compensable conditions which have actually worsened, the extent of permanent disability is redetermined. There is no redetermination for those conditions which are either unchanged or improved. In any case, the impairment values for those conditions not actually worsened continue to be the same impairment values that were established at the last arrangement of compensation.

(2) Except as provided by ORS 656.325 and 656.268(9), where a redetermination of permanent disability under ORS 656.273 results in an award that is less than the cumulative total of the worker's prior arrangements of compensation in the claim, the award is not reduced.

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0017

Authorized Training Program (ATP)

(1) When a worker ceases to be enrolled and actively engaged in training under ORS 656.268(9) and there is no accepted aggravation in the current open period, one of the following applies:

(a) When the date of injury is prior to January 1, 2005, the worker is entitled to have the amount of unscheduled permanent disability for a compensable condition reevaluated under these rules. The reevaluation includes impairment, which may increase, decrease, or affirm the worker's permanent disability award; or

(b) When the date of injury is on or after January 1, 2005, the worker is entitled to have the amount of work disability reevaluated under these rules, which does not include impairment.

(2) When a worker ceases to be enrolled and actively engaged in training under ORS 656.268(9) and there is an accepted aggravation in the same open period, actual worsening is evaluated under these rules. If there is no actual worsening, the prior award may be reduced or affirmed.

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0018

Death

If the worker dies due to causes unrelated to the accepted compensable conditions of the claim, the following applies:

(1) When all compensable conditions are medically stationary under OAR 436-030-0035 at the time of death, the following applies:

(a) Impairment findings, reported under OAR 436-010-0280, are rated under these rules.

(b) Impairment findings not reported according to OAR 436-010-0280 are determined based on the physician's estimate of those findings regarding impairment due to the worker's compensable condition.

(c) For unscheduled disability with a date of injury prior to January 1, 2005, age, education, and adaptability are determined under OAR 436-035-0012 if the findings are documented. If findings for determining adaptability are not documented, the physician estimates the likely residual functional capacity, under OAR 436-035-0012(8)(c) through (o), due to the compensable condition, if the compensable condition is to the hip, shoulder, head, neck, or torso. If the compensable condition is other than the shoulder, hip, head, neck, or torso, adaptability is determined under OAR 436-035-0012 based on the physician's estimated likely impairment.

(d) For disability with a date of injury on or after January 1, 2005, age, education, and adaptability are determined under OAR 436-035-0012 if the findings are documented. If findings for determining adaptability are not documented, the physician estimates the likely residual functional capacity that is due to the compensable condition under OAR 436-035-0012(8)(c) through (o). Using the physician's estimated likely impairment, adaptability is determined under OAR 436-035-0012.

(2) When all compensable conditions are not medically stationary under OAR 436-030-0035 at the time of death, the following applies:

(a) Impairment is established based on the physician's estimate of those findings regarding impairment due to the worker's compensable condition that would still be present when the worker's condition would have become medically stationary. Those findings that are anticipated to have remained at the time of medically stationary status receive a value.

(b) For unscheduled disability with a date of injury prior to January 1, 2005, age, education, and adaptability factors are determined under OAR 436-035-0012. Unless the worker is released to regular work and impairment only is rated, the physician estimates the likely residual functional capacity, under OAR 436-035-0012(8)(c) through (o), due to the compensable condition, that would remain due to the compensable condition, if the compensable condition is to the shoulder, hip, head, neck, or torso. The estimated portion due to the compensable condition receives an adaptability value. If the compensable condition is other than the shoulder, hip, head, neck, or torso, adaptability is determined under OAR 436-035-0012 based on the physician's estimated likely impairment.

(3) In claims where there is a compensable condition that is medically stationary and a compensable condition that is not medically stationary, the conditions are rated according to sections (1) and (2) of this rule, respectively. The adaptability factor is determined by comparing the adaptability values from sections (1) and (2) of this rule, and using the higher of the values for adaptability.

(4) If the worker dies due to causes related to the accepted compensable conditions of the claim, death benefits are due under ORS 656.204 and 656.208.

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

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436-035-0019

Chronic Condition

(1) A worker is entitled to a 5% chronic condition impairment value for each applicable body part, when a preponderance of medical opinion establishes that, due to a chronic and permanent medical condition, the worker is significantly limited in the repetitive use of one or more of the following body parts:

- (a) Lower leg (below knee/foot/ankle);
- (b) Upper leg (knee and above);
- (c) Forearm (below elbow/hand/wrist);
- (d) Arm (elbow and above);
- (e) Cervical;
- (f) Thoracic spine;
- (g) Shoulder;
- (h) Low back; and/or
- (i) Hip.

(2) Chronic condition impairments are to be combined with other impairment values, not added.

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0020

Parts of the Upper Extremities

(1) The arm begins with the head of the humerus. It includes the elbow joint.

(2) The forearm begins distal to the elbow joint and includes the wrist (carpal bones).

(3) The hand begins at the joints between the carpals and metacarpals. It extends to the joints between the metacarpals and the phalanges.

(4) The thumb and fingers begin at the joints between the metacarpal bones and the phalanges. They extend to the tips of the thumb and fingers, respectively.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0006, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0130; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0030

Amputations in the Upper Extremities

(1) Loss of the arm at or proximal to the elbow joint is 100% loss of the arm.

(2) Loss of the forearm at or proximal to the wrist joint is 100% loss of the forearm.

(3) Loss of the hand at the carpal bones is 100% loss of the hand.

(4) Loss of all or part of a metacarpal is rated at 10% of the hand

(5) Amputation or resection (without reattachment) proximal to the head of the proximal phalanx is 100% loss of the thumb. The ratings for other amputation(s) or resection(s) (without reattachment) of the thumb are as follows:

(6) Amputation or resection (without reattachment) proximal to the head of the proximal phalanx is 100% loss of the finger. The ratings for other amputation(s) or resection(s) (without reattachment) of the finger are as follows:

(7) Oblique (angled) amputations are rated at the most proximal loss of bone.

(8) When a value is granted under sections (5) and (6) of this rule which includes a joint, no value for range of motion of this joint is granted in addition to the amputation value.

(9) Loss of length in a digit other than amputation or resection without reattachment (e.g. fractures, loss of soft tissue from infection, amputation or resection with reattachment, etc.) is rated by comparing the remaining overall length of the digit to the applicable amputation chart under these rules and rating the overall length equivalency.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCB 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0010, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0140; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0040

Loss of Opposition in Thumb/Finger Amputations

(1) Loss of opposition is rated as a proportionate loss of use of the digits which can no longer be effectively opposed.

(a) For amputations which are not exactly at the joints, adjust the ratings in steps of 5%, increasing as the amputation gets closer to the attachment to the hand, decreasing to zero as it gets closer to the tip.

(b) When the value for loss of opposition is less than 5%, no value is granted.

(2) The following ratings apply to thumb amputations for loss of opposition:

(a) For thumb amputations at the interphalangeal level: [Rating not included. See ED. NOTE]

(b) For thumb amputations at the metacarpophalangeal level: [Rating not included. See ED. NOTE]

(3) The following ratings apply to finger amputations for loss of opposition. In every case, the opposing digit is the thumb: [Rating not included. See ED. NOTE]

(4) When determining loss of opposition due to loss of length in a digit, other than amputation or resection without reattachment, the value is established by comparing the remaining overall length of the digit to the applicable amputation chart under these rules and rated according to the overall length equivalency.

(5) If the injury is to one digit only and opposition loss is awarded for a second digit, do not convert the two digits to loss in the hand. Conversion to hand can take place only when more than one digit has impairment without considering opposition.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0150; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0050

Thumb

(1) The following ratings are for loss of flexion at the interphalangeal joint of the thumb: [Rating not included. See ED. NOTE]

(2) The following ratings are for loss of extension at the interphalangeal joint of the thumb: [Rating not included. See ED. NOTE]

(3) The following ratings are for ankylosis of the interphalangeal joint of the thumb: [Rating not included. See ED. NOTE]

(4) The following ratings are for loss of flexion at the metacarpophalangeal joint of the thumb: [Rating not included. See ED. NOTE]

(5) The following ratings are for loss of extension at the metacarpophalangeal joint of the thumb: [Rating not included. See ED. NOTE]

(6) The following ratings are for ankylosis of the metacarpophalangeal joint of the thumb: [Rating not included. See ED. NOTE]

(7) Rotational, lateral, dorsal, or palmar deformity of the thumb receives a value of 10% of the thumb.

(8) For losses in the carpometacarpal joint refer to OAR 436-035-0075.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0100, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0160; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 15-1996(Temp), f. & cert. ef. 7-3-96; WCD 18-1996(Temp), f. 8-6-96, cert. ef. 8-7-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0060

Finger

(1) The following ratings are for loss of flexion at the distal interphalangeal joint of any finger: [Rating not included. See ED. NOTE]

(2) The following ratings are for loss of extension at the distal interphalangeal joint of any finger: [Rating not included. See ED. NOTE]

(3) The following ratings are for ankylosis in the distal interphalangeal joint of any finger: [Rating not included. See ED. NOTE]

(4) The following ratings are for loss of flexion at the proximal interphalangeal joint of any finger: [Rating not included. See ED. NOTE]

(5) The following ratings are for loss of extension at the proximal interphalangeal joint of any finger: [Rating not included. See ED. NOTE]

(6) The following ratings are for ankylosis in the proximal interphalangeal joint of any finger: [Rating not included. See ED. NOTE]

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(7) The following ratings are for loss of flexion at the metacarpophalangeal joint of any finger: [Rating not included. See ED. NOTE]

(8) The following ratings are for loss of extension at the metacarpophalangeal joint of any finger: [Rating not included. See ED. NOTE]

(9) The following ratings are for ankylosis in the metacarpophalangeal joint of any finger: [Rating not included. See ED. NOTE]

(10) Rotational, lateral, dorsal, or palmar deformity of a finger shall receive a value of 10% for the finger.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0170; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0070

Conversion of Thumb/Finger Values to Hand Value

(1) Loss of use of two or more digits is converted to a value for loss in the hand if the worker will receive more money for the conversion. At least two digits must have impairment other than loss of opposition to qualify for conversion to hand.

(2) When converting impairment values of digits to hand values, the applicable hand impairment is determined by rating the total impairment value in each digit under OAR 436-035-0011(2)(b), then converting the digit values to hand values, and then adding the converted values. Digit values between zero and one are rounded to one prior to conversion.

(3) The following table shall be used to convert loss in the thumb to loss in the hand: [Table not included. See ED. NOTE.]

(4) The following table shall be used to convert loss in the index finger to loss in the hand: [Table not included. See ED. NOTE.]

(5) The following table shall be used to convert loss in the middle finger to loss in the hand: [Table not included. See ED. NOTE.]

(6) The following table shall be used to convert loss in the ring finger to loss in the hand: [Table not included. See ED. NOTE.]

(7) The following table shall be used to convert loss in the little finger to loss in the hand: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0180; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0075

Hand

(1) Pursuant to OAR 436-035-0020(3), the ratings in this section are hand values. Abduction and adduction of the carpometacarpal joint of the thumb are associated with the ability to extend and flex. This association has been taken into consideration in establishing the percentages of impairment.

(2) The following ratings are for loss of flexion (adduction) of the carpometacarpal joint of the thumb: [Rating not included. See ED. NOTE]

(3) The following ratings are for loss of extension (abduction) of the carpometacarpal joint of the thumb: [Rating not included. See ED. NOTE]

(4) The following ratings are for ankylosis of the carpometacarpal joint in flexion (adduction) of the thumb: [Rating not included. See ED. NOTE]

(5) The following ratings are for ankylosis of the carpometacarpal joint in extension (abduction) of the thumb: [Rating not included. See ED. NOTE]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0080

Wrist

(1) The following ratings are for loss of (dorsiflexion) extension at the wrist joint: [Rating not included. See ED. NOTE]

(2) The following ratings are for (dorsiflexion) extension ankylosis in the wrist joint: [Rating not included. See ED. NOTE]

(3) The following ratings are for loss of (palmar) flexion in the wrist joint: [Rating not included. See ED. NOTE]

(4) The following ratings are for (palmar) flexion ankylosis in the wrist joint: [Rating not included. See ED. NOTE]

(5) The following ratings are for loss of radial deviation in the wrist joint: [Rating not included. See ED. NOTE]

(6) The following ratings are for radial deviation ankylosis in the wrist joint: [Rating not included. See ED. NOTE]

(7) The following ratings are for loss of ulnar deviation in the wrist joint: [Rating not included. See ED. NOTE]

(8) The following ratings are for ulnar deviation ankylosis in the wrist joint: [Rating not included. See ED. NOTE]

(9) Injuries which result in a loss of pronation or supination in the wrist joint shall be valued pursuant to OAR 436-035-0100(4).

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, cert. ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0520, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; Amended 12-21-88 as WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0190; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0090

Conversion of Hand/Forearm Values to Arm Value

The following table shall be used to convert a loss in the hand/forearm to a loss in the arm: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, cert. ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0524, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0200; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0100

Arm

(1) The following ratings are for loss of flexion in the elbow joint (150° describes the arm in full flexion): [Rating not included. See ED. NOTE]

(2) The following ratings are for loss of extension in the elbow joint (0° describes the arm in full extension): [Rating not included. See ED. NOTE]

(3) Ankylosis of the elbow in flexion or extension shall be rated as follows: [Rating not included. See ED. NOTE]

(4) The following ratings are for loss of pronation or supination in the elbow joint. If there are losses in both pronation and supination, rate each separately and add the values: [Rating not included. See ED. NOTE]

(5) Ankylosis of the elbow in pronation or supination will be rated as follows: [Rating not included. See ED. NOTE]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, cert. ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0525, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0210; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0110

Other Upper Extremity Findings

(1) Loss of palmar sensation in the hand, finger(s), or thumb is rated according to the location and quality of the loss, and is measured by the two point discrimination method, as noted by the **AMA Guides, 3rd Ed. Rev., 1990**.

(a) If enough sensitivity remains to distinguish two pin pricks applied at the same time (two point), the following apply: [Rating not included. See ED. NOTE]

(b) In determining sensation findings for a digit which has been resected or amputated, the value is established by comparing the remaining overall length of the digit to the table in subsection (1)(c) of this rule and rating the length equivalency. [Rating not included. See ED. NOTE]

(c) Loss of sensation in the finger(s) or thumb is rated as follows:

(d) If the level of the loss is less than 1/2 the distal phalanx or falls between the levels in subsection (c) of this section, rate at the next highest (or more proximal) level.

(e) In 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. [Rating not included. See ED. NOTE]

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(f) Any portion of palmar sensation loss is rated as follows: [Rating not included. See ED. NOTE]

(g) Loss of sensation on the dorsal side of the hand, fingers or thumb is not considered a loss of function, so no value is allowed.

(h) Sensory loss in the forearm and/or arm is not considered a loss of function, therefore no value is allowed.

(i) When there are multiple losses of palmar sensation in a single body part (e.g. hand, finger(s), or thumb), the impairment values are first combined for an overall loss of sensation value for the individual digit or hand. This value is then combined with other impairment values for that digit or hand prior to conversion.

(j) Hypersensitivity resulting in a loss of use in the digits or palm, is valued utilizing the above loss of sensation tables. Mild hypersensitivity is valued at the equivalent impairment level as less than normal sensation, moderate hypersensitivity the equivalent of protective sensation loss, and severe hypersensitivity the equivalent of a total loss of sensation.

(2) When surgery or an injury results in arm length discrepancies involving the injured arm, the following values are given on the affected arm for the length discrepancy: [Rating not included. See ED. NOTE]

(3) Joint instability in the finger(s), thumb, or hand is rated according to the body part affected:

(4) Lateral deviation or malalignment of the upper extremity is valued as follows:

(a) Increased lateral deviation at or above the elbow is determined as follows: [Rating not included. See ED. NOTE]

(b) Fracture resulting in angulation or malalignment, other than at or above the elbow, is determined as follows: [Rating not included. See ED. NOTE]

(5) Surgery on the upper extremity is valued as follows:

(a) Finger/Thumb Surgery/Finger Impairment. [Rating not included. See ED. NOTE]

(b) Forearm/Hand Surgery/Forearm/Hand Impairment. [Rating not included. See ED. NOTE]

(c) Arm Surgery/Arm Impairment. [Rating not included. See ED. NOTE]

(6) Dermatological conditions, including burns, which are limited to the arm, forearm, hand, fingers, or thumb are rated according to the body part affected. The percentages indicated in the classes below are applied to the affected body part(s), e.g. a Class 1 dermatological condition of the thumb is 3% of the thumb, or a Class 1 dermatological condition of the hand is 3% of the hand, or a Class 1 dermatological condition of the arm is 3% of the arm. Contact dermatitis of an upper extremity is rated in this section unless it is an allergic systemic reaction, which is also rated under OAR 436-035-0450. Contact dermatitis for a body part other than the upper or lower extremities is rated under OAR 436-035-0440. Impairment is based on the following criteria:

(a) Class 1: 3% for the affected body part if there are signs and symptoms of a skin disorder and treatment results in no more than minimal limitation in the performance of activities of daily living, although exposure to physical or chemical agents may temporarily increase limitations.

(b) Class 2: 15% for the affected body part if there are signs and symptoms of a skin disorder requiring intermittent treatment and prescribed examinations and the worker has some limitations in the performance of activities of daily living.

(c) Class 3: 38% for the affected body part if there are signs and symptoms of a skin disorder requiring regularly prescribed examinations, continuous treatments are required and the worker has many limitations in the performance of activities of daily living.

(d) Class 4: 68% for the affected body part if there are signs and symptoms of a skin disorder and continuous prescribed treatments are required. The treatment may include periodically having the worker stay home or admitting the worker to a care facility, and the worker has many limitations in the performance of activities of daily living.

(e) Class 5: 90% for the affected body part if there are signs and symptoms of a skin disorder and continuous prescribed treatment is required. The treatment necessitates having the worker stay home or being permanently admitted to a care facility, and the worker has severe limitations in the performance of activities of daily living.

(7) Vascular dysfunction of the upper extremity is valued according to the affected body part, using the following classification table:

(a) Class 1: 3% for the affected body part if the worker experiences only transient edema; and on physical examination, the findings are limited to the following: loss of pulses, minimal loss of subcutaneous tissue of fingertips, calcification of arteries as detected by radiographic examination, asymptomatic dilation of arteries or veins (not requiring surgery and

resulting in curtailment of activity), or cold intolerance (e.g. Raynaud's phenomenon) which results in a loss of use or function that occurs with exposure to temperatures below freezing (0° Centigrade).

(b) Class 2: 15% for the affected body part if the worker experiences intermittent pain with repetitive exertional activity; or there is persistent moderate edema incompletely controlled by elastic supports; or there are signs of vascular damage such as a healed stump of an amputated digit, with evidence of persistent vascular disease, or a healed ulcer; or cold intolerance (e.g. Raynaud's phenomenon) which results in a loss of use or function that occurs on exposure to temperatures below 4° Centigrade.

(c) Class 3: 35% for the affected body part if the worker experiences intermittent pain with moderate upper extremity usage; or there is marked edema incompletely controlled by elastic supports; or there are signs of vascular damage such as a healed amputation of two or more digits, with evidence of persistent vascular disease, or superficial ulceration; or cold intolerance (e.g. Raynaud's phenomenon) which results in a loss of use or function that occurs on exposure to temperatures below 10° Centigrade.

(d) Class 4: 63% for the affected body part if the worker experiences intermittent pain upon mild upper extremity usage; or there is marked edema that cannot be controlled by elastic supports; or there are signs of vascular damage such as an amputation at or above the wrist, with evidence of persistent vascular disease, or persistent widespread or deep ulceration involving one extremity; or cold intolerance (e.g. Raynaud's phenomenon) which results in a loss of use or function that occurs on exposure to temperatures below 15° Centigrade.

(e) Class 5: 88% for the affected body part if the worker experiences constant and severe pain at rest; or there are signs of vascular damage involving more than one extremity such as amputation at or above the wrist, or amputation of all digits involving more than one extremity with evidence of persistent vascular disease, or persistent widespread deep ulceration involving more than one extremity; or cold intolerance such as Raynaud's phenomenon which results in a loss of use or function that occurs on exposure to temperatures below 20° Centigrade.

(f) If partial amputation of the affected body part occurs as a result of vascular disease, the impairment values are rated separately.

(8) Injuries to unilateral spinal nerve roots or brachial plexus with resultant loss of strength in the arm, forearm or hand are determined according to the specific nerve root which supplies (innervates) the weakened muscle(s), as described in the following table and modified under OAR 436-035-0011(7):

(a) SPINAL NERVE ROOT Arm Impairment; [Rating not included. See ED. NOTE]

(b) For loss of strength in bilateral extremities, each extremity is rated separately.

(9) When a spinal nerve root or brachial plexus are not injured, valid loss of strength in the arm, forearm or hand, substantiated by clinical findings, is valued based on the peripheral nerve supplying (innervating) the muscle(s) demonstrating the decreased strength, as described in the following table and as modified under OAR 436-035-0011(7). [Rating not included. See ED. NOTE]

(a) Loss of strength due to an injury in a single finger or thumb receives a value of zero.

(b) Decreased strength due to an amputation receives no rating for weakness in addition to that given for the amputation.

(c) Decreased strength due to a loss in range of motion receives no rating for weakness in addition to that given for the loss of range of motion.

(d) When loss of strength is present in the shoulder, refer to OAR 436-035-0330 for determination of the impairment.

(10) For motor loss in any part of an arm which is due to brain or spinal cord damage, impairment is valued as follows:

(a) Severity of Motor Loss = Arm Impairment; [Rating not included. See ED. NOTE]

(b) When a value is granted under subsection (a) of this section, additional impairment values are not allowed for weakness, chronic condition, or reduced range of motion in the same extremity.

(c) For bilateral extremity loss, each extremity is rated separately.

(11) Neurological dysfunction resulting in cold intolerance in the upper extremity is valued according to the affected body part utilizing the same classifications for cold intolerance due to vascular dysfunction in section (7) of this rule.

[ED. NOTE: Ratings and Values referenced are available from the agency.]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-

1-82; Renumbered from 436-065-0530, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88;

WCD 5-1988, f. 8-22-88, cert. ef. 8-1-9-88; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD

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7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0220; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0115

Conversion of Upper Extremity Values to Whole Person Values

(1) The tables in this rule are used to convert losses in the upper extremity to a whole person (WP) value for claims with a date of injury on or after January 1, 2005.

(2) The following table is used to convert losses in the thumb and fingers to a whole person (WP) value.

(3) The following table is used to convert a loss in a hand/forearm to a whole person (WP) value.

(4) The following table is used to convert a loss in the arm to a whole person (WP) value.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0130

Parts of the Lower Extremities

(1) The leg begins with the femoral head and includes the knee joint.

(2) The foot begins just distal to the knee joint and extends just proximal to the metatarsophalangeal joints of the toes.

(3) The toes begin at the metatarsophalangeal joints. Disabilities in the toes are not converted to foot values, regardless of the number of toes involved, unless the foot is also impaired.

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0535, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0240; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0140

Amputations in the Lower Extremities

(1) Amputation at or above the knee joint (up to and including the femoral head) is rated at 100% loss of the leg.

(2) Amputation of the foot:

(a) At or above the tibio-talar joint but below the knee joint is rated at 100% loss of the foot.

(b) At the tarsometatarsal joints is rated at 75% loss of the foot.

(c) At the mid-metatarsal area is rated at 50% of the foot.

(d) Loss of all or part of a metatarsal is rated at 10% of the foot.

(3) Amputation of the great toe:

(a) At the interphalangeal joint is rated at 50% loss of the great toe. Between the interphalangeal joint and the tip will be rated in 5% increments, starting with zero for no loss of the tip.

(b) At the metatarsophalangeal joint is rated at 100% loss of the great toe. Between the interphalangeal joint and the metatarsophalangeal joint will be rated in 5% increments, starting with 50% of the great toe for amputation at the interphalangeal joint.

(4) Amputation of the second through fifth toes:

(a) At the distal interphalangeal joint is rated at 50% loss of the toe. Between the distal interphalangeal and the tip will be rated in 5% increments, starting with zero for no loss of the tip.

(b) At the proximal interphalangeal joint is rated at 75% loss of the toe. Between the proximal interphalangeal joint and the distal interphalangeal joint will be rated in 5% increments, starting with 50% of the toe for amputation at the distal interphalangeal joint.

(c) At the metatarsophalangeal joint is rated at 100% loss of the toe. Between the proximal interphalangeal joint and the metatarsophalangeal joint will be rated in 5% increments, starting with 75% of the toe for amputation at the proximal interphalangeal joint.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0536, 5-1-85; WCD 2-1988, f. 6-3-87, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0250; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0160

Second through Fifth Toes

(1) No rating is given for loss of motion in the distal interphalangeal joint of the second through fifth toes (to be referred to as toes), except in the case of ankylosis.

(2) Ankylosis in the distal interphalangeal joint of the toes is rated as follows: [Rating not included. See ED. NOTE]

(3) No rating is given for loss of motion in the proximal interphalangeal joint of the toes, except in the case of ankylosis.

(4) Ankylosis in the proximal interphalangeal joint of the toes is rated as follows: [Rating not included. See ED. NOTE]

(5) The following ratings are for loss of dorsiflexion (extension) in the metatarsophalangeal joints of the toes: [Rating not included. See ED. NOTE]

(6) The following ratings are for dorsiflexion (extension) ankylosis in the metatarsophalangeal joints of the toes: [Rating not included. See ED. NOTE]

(7) The following ratings are for loss of (plantar) flexion in the metatarsophalangeal joints of the toes: [Rating not included. See ED. NOTE]

(8) Plantarflexion ankylosis in the metatarsophalangeal joints of the toes is rated as follows: [Rating not included. See ED. NOTE]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0510, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0280; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0190

Foot

(1) Ankylosis at the tarsometatarsal joints receives a rating of 10% of the foot for each of the tarsometatarsal joints ankylosed.

(2) The following ratings are for loss of subtalar inversion in the foot: [Rating not included. See ED. NOTE]

(3) The following ratings are for subtalar inversion (varus) ankylosis in the foot: [Rating not included. See ED. NOTE]

(4) The following ratings are for loss of subtalar eversion in the foot: [Rating not included. See ED. NOTE]

(5) The following ratings are for subtalar eversion (valgus) ankylosis in the foot: [Rating not included. See ED. NOTE]

(6) The following ratings are for loss of dorsiflexion (extension) in the ankle joint: [Rating not included. See ED. NOTE]

(7) The following ratings are for dorsiflexion (extension) ankylosis in the ankle joint: [Rating not included. See ED. NOTE]

(8) The following ratings are for loss of plantar flexion in the ankle joint: [Rating not included. See ED. NOTE]

(9) The following ratings are for plantar flexion ankylosis in the ankle joint: [Rating not included. See ED. NOTE]

(10) The following applies to determining impairment for loss of motion and/or ankylosis in the ankle and/or subtalar joint:

(a) If there is loss of motion only (no ankylosis in either joint) in the subtalar joint and/or the ankle joint, the following applies:

(A) The values for loss of motion in the subtalar joint are added;

(B) The values for loss of motion in the ankle joint are added;

(C) The value for loss of motion in the subtalar joint is added to the value for loss of motion in the ankle joint.

(b) If there is ankylosis in the ankle and/or subtalar joint, the following applies:

(A) When there is ankylosis in one joint only with no loss of motion or ankylosis in the other joint, that ankylosis value is granted.

(B) When there is loss of motion in one joint and ankylosis in the other joint, add the ankylosis value to the value for loss of motion in the non-ankylosed joint.

(C) When the ankle joint is ankylosed in plantar flexion and dorsiflexion, use only the largest ankylosis value for rating the loss or only one of the values if they are identical. Under OAR 436-035-0007(9), this ankylosis value is granted in lieu of all other range of motion or ankylosis values for the ankle joint.

(D) When the subtalar joint is ankylosed in inversion and eversion, use only the largest ankylosis value for rating the loss or only one of the values if they are identical. Under OAR 436-035-0007(9), this ankylosis value is granted in lieu of all other range of motion or ankylosis values for the subtalar joint.

(E) When both joints are ankylosed, add the ankle joint value to the subtalar joint value.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0524, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0310; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-

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97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0220

Leg

(1) The following ratings are for loss of flexion in the knee (150° describes the knee in full flexion): [Rating not included. See ED. NOTE]

(2) The following ratings are for loss of extension in the knee (0° describes the knee in full extension): [Rating not included. See ED. NOTE]

(3) Ankylosis of the knee in flexion or extension shall be rated as follows: [Rating not included. See ED. NOTE]

(4) The determination of loss of range of motion in the hip is valued in this section when there is no pelvic bone involvement. Loss associated with pelvic bone involvement is determined pursuant to OAR 436-035-0340.

(5) The following ratings are for loss of forward flexion in the hip: [Rating not included. See ED. NOTE]

(6) The following ratings are for loss of backward extension in the hip joint: [Rating not included. See ED. NOTE]

(7) The following ratings are for loss of abduction in the hip joint: [Rating not included. See ED. NOTE]

(8) The following ratings are for loss of adduction in the hip joint: [Rating not included. See ED. NOTE]

(9) The following ratings are for loss of internal rotation in the hip joint: [Rating not included. See ED. NOTE]

(10) The following ratings are for loss of external rotation in the hip joint: [Rating not included. See ED. NOTE]

(11) Ankylosis in the hip joint is rated under OAR 436-035-0340.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0530, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0330; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0230

Other Losses in the Leg or Foot

(1) Loss or alteration (e.g. hypersensitivity) of sensation in the leg is not considered disabling except for the plantar surface of the foot and toes, including the great toe, where it is rated as follows:

(a) partial loss or alteration of sensation. [Ratings not included. See ED. NOTE.]

(b) Loss or alteration of sensation in the toes in addition to loss or alteration of sensation in the foot is rated for the foot only. No additional value is allowed for loss or alteration of sensation in the toes.

(2) The following ratings are for length discrepancies of the injured leg. However, loss of length due to flexion/extension deformities are excluded. The rating is the same whether the length change is a result of an injury to the foot or to the upper leg: [Ratings not included. See ED. NOTE.]

(3) Valid instability in the ankle or knee substantiated by clinical findings is valued based on the ligament demonstrating the laxity, as described in the following table:

(a) For ankle joint instability to be rated as severe there must be a complete disruption of two or more ligaments.

(b) For knee joint instability the severity of joint opening is mild at a grade 1 or 1+ (1-5mm), moderate at a grade 2 or 2+ (6-10mm), and severe at a grade 3 or 3+ (>10mm).

(c) Ankle joint instability with additional anterior and/or posterior instability receives an additional 10%.

(d) When there is a prosthetic knee replacement, instability of the knee is not rated unless the severity of the instability is equivalent to Grade 2 or greater.

(e) Rotary instability in the knee is included in the impairment value(s) of this section.

(f) Multiple instability values in a single joint are combined.

(4) When injury in the ankle or knee/leg results in angulation or malalignment, impairment values are determined according to the following:

(a) Varus deformity greater than 15° of the knee/leg is rated at 10% of the leg and of the ankle is rated at 10% of the foot.

(b) Valgus deformity greater than 20° of the knee/leg is rated at 10% of the leg and of the ankle is rated at 10% of the foot.

(c) Tibial shaft fracture resulting in angulation or malalignment (rotational deformity) affects the function of the entire leg and is rated as follows: [Ratings not included. See ED. NOTE.]

(d) Injury resulting in a rocker bottom deformity of the foot is valued at 14%.

(5) The following values are for surgery of the toes, foot, or leg:

(a) In the great toe: [Ratings not included. See ED. NOTE.]

(b) In the second through fifth toes: [Ratings not included. See ED. NOTE.]

(c) Foot Surgery = Foot/Ankle Impairment. [Ratings not included. See ED. NOTE.]

(d) Leg Surgery = Leg Impairment. [Ratings not included. See ED. NOTE.]

(e) When rating a prosthetic knee replacement, a separate value for meniscectomy(s) and/or patellectomy for the same knee is not granted.

(f) In a meniscectomy where only the meniscal "rim" remains, the value is the same as a total meniscectomy.

(6) Dermatological conditions including burns which are limited to the leg or foot are rated according to the body part affected. The percentages indicated in the classes below are applied to the affected body part(s), e.g. a Class 1 dermatological condition of the foot is 3% of the foot, or a Class 1 dermatological condition of the leg is 3% of the leg. Contact dermatitis is determined under this section unless it is caused by an allergic systemic reaction which is also determined under OAR 436-035-0450. Contact dermatitis for an body part is rated under OAR 436-035-0440. Impairment is determined based on the following criteria:

(a) Class 1: 3% for the leg or foot if there are signs and symptoms of a skin disorder and treatment results in no more than minimal limitations in the performance of the activities of daily living, although exposure to physical or chemical agents may temporarily increase limitations.

(b) Class 2: 15% for the leg or foot if there are signs and symptoms of a skin disorder and treatments and prescribed examinations are required intermittently, and the worker has some limitations in the performance of activities of daily living.

(c) Class 3: 38% for the leg or foot if there are signs and symptoms of a skin disorder and regularly prescribed examinations and continuous treatments are required, and the worker has many limitations in the performance of activities of daily living.

(d) Class 4: 68% for the leg or foot if there are signs and symptoms of a skin disorder and continuous prescribed treatments are required. The treatment may include periodically having the worker stay home or admitting the worker to a care facility, and the worker has many limitations in the performance of activities of daily living.

(e) Class 5: 90% for the leg or foot if there are signs and symptoms of a skin disorder and continuous prescribed treatment is required. The treatment necessitates having the worker stay home or permanently admitting the worker to a care facility, and the worker has severe limitations in the performance of activities of daily living.

(f) Full thickness skin loss of the heel is valued at 10% of the foot, even when the area is successfully covered with an appropriate skin graft.

(7) The following ratings are for vascular dysfunction of the leg. The impairment values are determined according to the following classifications:

(a) Class 1: 3% for the leg. Workers belong in Class 1 when any of the following exist:

(A) Loss of pulses in the foot.

(B) Minimal loss of subcutaneous tissue.

(C) Calcification of the arteries (as revealed by x-ray).

(D) Transient edema.

(b) Class 2: 15% for the leg. Workers belong in Class 2 when they suffer from any of the following:

(A) Limping due to intermittent claudication that occurs when walking at least 100 yards.

(B) Vascular damage, as evidenced by a healed painless stump of a single amputated toe, with evidence of chronic vascular dysfunction or a healed ulcer.

(C) Persistent moderate edema which is only partially controlled by support hose.

(c) Class 3: 35% for the leg. Workers belong in Class 3 when they suffer from any of the following:

(A) Limping due to intermittent claudication when walking as little as 25 yards and no more than 100 yards.

(B) Vascular damage, as evidenced by healed amputation stumps of two or more toes on one foot, with evidence of chronic vascular dysfunction or persistent superficial ulcers on one leg.

(C) Obvious severe edema which is only partially controlled by support hose.

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(d) Class 4: 63% for the leg. Workers belong in Class 4 when they suffer from any of the following:

(A) Limping due to intermittent claudication after walking less than 25 yards.

(B) Intermittent Pain in the legs due to intermittent claudication when at rest.

(C) Vascular damage, as evidenced by amputation at or above the ankle on one leg, or amputation of two or more toes on both feet, with evidence of chronic vascular dysfunction or widespread or deep ulcers on one leg.

(D) Obvious severe edema which cannot be controlled with support hose.

(e) Class 5: 88% for the leg. Workers belong in Class 5 when they suffer from either of the following:

(A) Constant severe pain due to claudication at rest.

(B) Vascular damage, as evidenced by amputations at or above the ankles of both legs, or amputation of all toes on both feet, with evidence of persistent vascular dysfunction or of persistent, widespread, or deep ulcerations on both legs.

(f) If partial amputation of the lower extremity occurs as a result of vascular dysfunction, the impairment values are rated separately. The amputation value is then combined with the impairment value for the vascular dysfunction.

(8) Injuries to unilateral spinal nerve roots with resultant loss of strength in the leg or foot is determined according to the specific nerve root supplying (innervating) the weakened muscle(s), as described in the following table and modified under OAR 436-035-0011(7).

(a) Spinal nerve root = Leg impairment. [Ratings not included. See ED. NOTE.]

(b) Loss of strength in bilateral extremities results in each extremity being rated separately.

(9) When a spinal nerve root or lumbosacral plexus are not injured, valid loss of strength in the leg or foot, substantiated by clinical findings, is valued based on the peripheral nerve supplying (innervating) the muscle(s) demonstrating the decreased strength, as described in the following table and as modified under OAR 436-035-0011(7). [Examples not included. See ED. NOTE.]

(a) Loss of strength due to an injury in a single toe receives a value of zero.

(b) Decreased strength due to an amputation receives no rating for weakness in addition to that given for the amputation.

(c) Decreased strength due to a loss in range of motion receives no rating for weakness in addition to that given for the loss of range of motion.

(10) For motor loss to any part of a leg which is due to brain or spinal cord damage, impairment is valued as follows:

(a) Severity of Motor Loss = Leg Impairment. [Ratings not included. See ED. NOTE.]

(b) When a value is granted under subsection (a) of this section, additional impairment values in the same extremity are not allowed for weakness, reduced range of motion or limited ability to walk/stand for two hours or less.

(c) For bilateral extremity loss, each extremity is rated separately.

(11) If there is a diagnosis of Grade IV chondromalacia, extensive arthritis or extensive degenerative joint disease and one or more of the following are present: secondary strength loss; chronic effusion; varus or valgus deformity less than that specified in section (4) of this rule, then one or more of the following rating values apply:

(a) 5% of the foot for the ankle joint; and/or

(b) 5% of the leg for the knee joint.

(12) For a diagnosis of degenerative joint disease, chondromalacia, or arthritis which does not meet the criteria noted in section (11) of this rule, the impairment is determined under the chronic condition rule (OAR 436-035-0019) if the criteria in that rule is met.

(13) Other impairment values, e.g., weakness, chronic condition, reduced range of motion, etc., are combined with the value granted in section (11) of this rule.

(14) When there is an injury to the knee/leg and objective medical evidence establishes the worker cannot walk and/or stand for a cumulative total of more than two hours in an 8-hour period, the award is 15% of the knee/leg, except for:

(a) A worker who is entitled to receive an impairment value under section (11) of this rule (degenerative joint disease, arthritis or chondromalacia) is awarded 10% of the knee/leg, in lieu of the 15%.

(b) A worker who is entitled to receive a dermatological or vascular impairment value, Class II or higher, under section (6) or (7) of this rule is not allowed an additional value under this section.

(c) When a worker qualifies to receive a value under section (15) of this rule and a value pursuant to this section, only one of the values is granted for limited standing or walking; the higher monetary value.

(15) Where the objective medical evidence indicates a severe injury to the foot/ankle has occurred (e.g. severe soft tissue crush injuries, tri-malleolar fracture, calcaneal fractures, or post-traumatic avascular necrosis), the following applies:

(a) When objective medical evidence establishes the worker cannot walk and/or stand for a cumulative total of more than two hours in an 8-hour period, the award is 15% of the foot/ankle, except for (b) of this section.

(b) A worker who has a dermatological or vascular impairment value, Class II or higher, under section (6) or (7) of this rule, is not allowed an additional value under this section.

(c) When a worker qualifies to receive a value under section (14) of this rule, as well as a value under this section, only the one resulting in the higher monetary value is granted.

[ED. NOTE: Ratings & Values referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, cert. ef. 4-1-80.; WCD 5-1981(Admin), f. 12-30-81, cert. ef. 1-1-82; Renumbered from 436-065-0532, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0340; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 10-1992(Temp), f. & cert. ef. 6-1-92; WCD 15-1992, f. 11-20-92, cert. ef. 11-27-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0235

Conversion of Lower Extremity Values to Whole Person Values

(1) The tables in this rule are used to convert losses in the lower extremity to a whole person (WP) value for claims with a date of injury on or after January 1, 2005.

(2) The following table is used to convert losses in the great toe to a whole person (WP) value. Impairment in any of the other toes receives a whole person value of 1% for each toe that is injured.

(3) The following table is used to convert a loss in the foot to a whole person (WP) value.

(4) The following table is used to convert a loss in the leg to a whole person (WP) value.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0250

Hearing Loss

(1) The following information is provided by the attending physician or reviewed and commented on by the attending physician, under OAR 436-035-0007(5) and (6), to value work-related hearing loss:

(a) A written record, history, examination, diagnosis, opinion, interpretation and a statement noting if further material improvement would reasonably be expected from medical treatment or the passage of time by a medical provider with specialty training or experience in evaluating hearing loss.

(b) The complete audiometric testing.

(2) Compensation may be given only for loss of normal hearing which results from an on-the-job injury or exposure. Unless the conditions have combined under OAR 436-035-0014(1), hearing loss which existed before this injury or exposure will be offset against hearing loss in the claim, if adequately documented by a baseline audiogram obtained within 180 days of assignment to a high noise environment.

(a) The offset will be done at the monaural percentage of impairment level.

(b) Determine the monaural percentage of impairment for the baseline audiogram under section (4) of this rule.

(c) Subtract the baseline audiogram impairment from the current audiogram impairment to obtain the impairment value.

(3) Hearing loss is based on audiograms which must report on air conduction frequencies at 500, 1,000, 2,000, 3,000, 4,000 and 6,000 Hz.

(a) Audiograms should be based on **American National Standards Institute S3.6 (1989) standards.**

(b) Test results will be accepted only if they come from a test conducted at least 14 consecutive hours after the worker has been removed from significant exposure to noise.

(4) Impairment of hearing is calculated from the number of decibels by which the worker's hearing exceeds 150 decibels (hearing impairment

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threshold). Compensation for monaural hearing loss is calculated as follows:

(a) Add the audiogram findings at 500, 1,000, 2,000, 3,000, 4,000 and 6,000 Hz. Decibel readings in excess of 100 will be entered into the computations as 100 dB.

(b) Hearing loss due to presbycusis is based on the worker's age at the time of the audiogram. Consult the Presbycusis Correction Values Table below. (These values represent the total decibels of hearing loss in the six standard frequencies which normally results from aging.) Find the figure for presbycusis hearing loss. Take this presbycusis figure and subtract the hearing impairment threshold of 150 decibels. Subtract any positive value from the sum of the audiogram entries. This value represents the total decibels of hearing loss in the six standard frequencies which normally results from aging that exceed the hearing impairment threshold. (If there is no positive value there is no hearing impairment attributable to presbycusis above the hearing impairment threshold.)

(c) Consult the Monaural Hearing Loss Table below, using the figure found in subsection (b) of this section. This table will give you the percent of monaural hearing loss to be compensated.

(d) No value is allowed for db totals of 150 or less. The value for db totals of 550 or more is 100%.

(5) Binaural hearing loss is calculated as follows:

(a) Find the percent of monaural hearing loss for each ear by using the method listed in (4)(a)–(c) above.

(b) Multiply the percent of loss in the better ear by seven.

(c) Add to that result the percent of loss in the other ear.

(d) Divide this sum by eight. This is the percent of binaural hearing loss to be compensated.

(e) This method is expressed by the formula: [Formula not included. See ED. NOTE.]

(6) Use the method (monaural or binaural) which results in the greater impairment.

(7) Tinnitus and other auditory losses may be determined as losses under OAR 436-035-0390.

[ED. NOTE: Tables and Formulas referenced are available from the agency.]

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

Stat. Auth.: ORS 656.726

Stats.Implemented: ORS 656.005, 656.214, 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0536, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0360; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 1-1997, f. & cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0255

Conversion of Hearing Loss Values to Whole Person Values

(1) The following table is used to convert a loss of hearing in one ear to a whole person (WP) value for claims with a date of injury on or after January 1, 2005. [Table not included. See ED. NOTE.]

(2) The following table is used to convert a loss of hearing in two ears to a whole person (WP) value for claims with a date of injury on or after January 1, 2005. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 656.726

Stats.Implemented: ORS 656

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0260

Visual Loss

(1) Visual loss due to a work-related illness or injury is rated for central visual acuity, integrity of the peripheral visual fields, and ocular motility. For ocular disturbances which cause visual impairment that is not reflected in visual acuity, visual fields or ocular motility refer to section (5) of this rule. For lacrimal system disturbances refer to OAR 436-035-0440.

(2) Ratings for loss in central visual acuity are calculated for each eye as follows:

(a) Reports for central visual acuity must be for distance and near acuity. Both acuities are measured with best correction, utilizing the lenses recommended by the worker's physician.

(b) The ratings for loss of distance acuity are as follows, reported in standard increments of Snellen for English and Metric 6: [Ratings not included. See ED. NOTE.]

(c) The ratings for loss of near acuity are as follows: reported in standard increments of Snellen 14/14 notation, Revised Jaeger Standard, or American Point-type notation: [Ratings not included. See ED. NOTE.]

(d) Once the ratings for near and distance acuity are found, add them and divide by two. The value which results is the rating for lost central visual acuity.

(e) If a lens has been removed and a prosthetic lens implanted, an additional 25%, is to be combined (not added) with the percent loss for central visual acuity to determine total central visual acuity, as shown in table (g).

(f) If a lens has been removed and there is no prosthetic lens implanted, an additional 50% is to be combined (not added) with the percent loss for central visual acuity to determine total central visual acuity, as shown in table (g).

(g) The table below may be substituted for combining central visual acuity and the loss of a lens for a total central visual acuity. The table displays the percent loss of central vision for the range of near and distance acuity combined with lens removal for a total central visual acuity. The upper figure is to be used when the lens is present (as found in (d)), the middle figure is to be used when the lens is absent and a prosthetic lens has been implanted (as found in (e)), and the lower figure is to be used when the lens is absent with no implant (as found in (f)). If near acuity is reported in Revised Jaeger Standard or American Point-type, convert these findings to Near Snellen for rating purposes under (2)(c) of this rule when using this table.

(3) Ratings for loss of visual field are based upon the results of field measurements of each eye separately using the Goldmann perimeter with a III/4e stimulus. The results may be scored in either one of the two following methods:

(a) Using the monocular Esterman Grid, count all the printed dots outside or falling on the line marking the extent of the visual field. The number of dots counted is the percentage of visual field loss; or

(b) A perimetric chart may be used which indicates the extent of retained vision for each of the eight standard 45% meridians out to 90°. The directions and normal extent of each meridian are as follows: [Ratings not included. See ED. NOTE.]

(A) Record the extent of retained peripheral visual field along each of the eight meridians. Add (do not combine) these eight figures. Find the corresponding percentage for the total retained degrees by use of the table below.

(B) For loss of a quarter or half field, first find half the sum of the normal extent of the two boundary meridians. Then add to this figure the extent of each meridian included within the retained field. This results in a figure which may be applied in the chart below.

(C) Visual field loss due to scotoma in areas other than the central visual field is rated by adding the degrees lost within the scotoma along affected meridians and subtracting that amount from the retained peripheral field. That figure is then applied to the chart below.

(4) Ratings for ocular motility impairment resulting in binocular diplopia are determined as follows:

(a) Determine the single highest value of loss for diplopia noted on each of the standard 45% meridians as listed in the following table.

(b) Add the values obtained for each meridian to obtain the total impairment for loss of ocular motility. A total of 100% or more is rated as 100% of the eye. As an example: Diplopia on looking horizontally off center from 30 degrees in a left direction is valued at 10%. Diplopia in the same eye when looking horizontally off center from 21 to 30 degrees in a right direction is valued at 20%. The impairments for diplopia in both ranges are added, so the impairment rating would be 10% plus 20% resulting in a total loss of ocular motility of 30%.

(5) To the extent that stereopsis (depth perception), glare disturbances or monocular diplopia causes visual impairment are not reflected in visual acuity, visual field or ocular motility, the losses for visual acuity, visual fields or ocular motility will be combined with an additional 5% when in the opinion of the physician the impairment is moderate, 10% if the impairment is severe.

(6) The total rating for monocular loss is found by combining (not adding) the ratings for loss of central vision, loss of visual field, and loss of ocular motility and loss for other conditions specified in section (5) of this rule.

(7) The total rating for binocular loss is figured as follows:

(a) Find the percent of monocular loss for each eye.

(b) Multiply the percent of loss in the better eye by three.

(c) Add to that result the percent of loss in the other eye.

(d) Divide this sum by four. The result is the total percentage of binocular loss.

(e) This method is expressed by the formula: [Formula not included. See ED. NOTE.]

(8) Use the method (monocular or binocular) which results in the greater impairment rating.

[ED. NOTE: Formula and Ratings referenced are available from the agency.]

Stat. Auth.: ORS 656.726

ADMINISTRATIVE RULES

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726
Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0575, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0370; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0265

Conversion of Vision Loss Values to Whole Person Values

(1) The following table is used to convert vision loss in one eye to a whole person (WP) value for claims with a date of injury on or after January 1, 2005: [Table not included. See ED. NOTE.]

(2) The following table is used to convert vision loss in both eyes to a whole person (WP) value for claims with a date of injury on or after January 1, 2005: [Table not included. See ED. NOTE.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0330

Shoulder Joint

(1) The following ratings are for loss of forward elevation (flexion) in the shoulder joint: [Ratings not included. See ED. NOTE.]

(2) The following ratings are for forward elevation (flexion) ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(3) The following ratings are for loss of backward elevation (extension) in the shoulder joint: [Ratings not included. See ED. NOTE.]

(4) The following ratings are for backward elevation (extension) ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(5) The following ratings are for loss of abduction in the shoulder joint: [Ratings not included. See ED. NOTE.]

(6) The following ratings are for abduction ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(7) The following ratings are for loss of adduction in the shoulder joint: [Ratings not included. See ED. NOTE.]

(8) The following ratings are for adduction ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(9) The following ratings are for loss of internal rotation in the shoulder joint: [Ratings not included. See ED. NOTE.]

(10) The following ratings are for internal rotation ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(11) The following ratings are for loss of external rotation in the shoulder joint: [Ratings not included. See ED. NOTE.]

(12) The following ratings are for external rotation ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(13) Shoulder surgery is rated as follows: [Ratings not included. See ED. NOTE.]

(14) Chronic dislocations of the shoulder joint or diastasis of a sternal joint, are valued at 15% impairment when a preponderance of medical opinion places permanent new restrictions on the worker which necessitate a reduction in the strength lifting category under OAR 436-035-0012.

(15) When two or more ranges of motion are restricted, add the impairment values for decreased range of motion.

(16) When two or more ankylosis positions are documented, select the one direction representing the largest impairment. That will be the impairment value for the shoulder represented by ankylosis.

(17) When a spinal nerve root or brachial plexus are not injured, valid loss of strength in the shoulder or back, substantiated by clinical findings, are valued based on the peripheral nerve supplying (innervating) the muscle(s) demonstrating the decreased strength, as described in the following table and as modified under OAR 436-035-0011(7): [Example not included. See ED. NOTE.]

(18) Multiple or bilateral decreased strength impairment findings are determined by combining the values in section (17) of this rule.

[ED. NOTE: Examples & Ratings referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0610, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-19-88; WCD 5-1988(Temp), f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0480; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 10-1998(Temp), f. & cert. ef. 10-28-98 thru 4-25-99; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0340

Hip

(1) When a preponderance of objective medical evidence supports findings that reduced ranges of motion of the hip do not involve the pelvis and/or acetabulum, the impairment determination shall be valued according to OAR 436-035-0220. If the reduced ranges of motion are a residual of pelvic and/or acetabular involvement, the impairment is determined pursuant to this rule.

(2) The following ratings are for loss of forward flexion in the hip joint: [Ratings not included. See ED. NOTE.]

(3) The following ratings are for forward flexion ankylosis in the hip joint: [Ratings not included. See ED. NOTE.]

(4) The following ratings are for loss of backward extension in the hip joint: [Ratings not included. See ED. NOTE.]

(5) The following ratings are for backward extension ankylosis of the hip joint: [Ratings not included. See ED. NOTE.]

(6) The following ratings are for loss of abduction in the hip joint: [Ratings not included. See ED. NOTE.]

(7) The following ratings are for abduction ankylosis in the hip joint: [Ratings not included. See ED. NOTE.]

(8) The following ratings are for loss of adduction in the hip joint: [Ratings not included. See ED. NOTE.]

(9) The following ratings are for adduction ankylosis in the hip joint: [Ratings not included. See ED. NOTE.]

(10) The following ratings are for loss of internal rotation of the hip joint: [Ratings not included. See ED. NOTE.]

(11) The following ratings are for internal rotation ankylosis of the hip joint: [Ratings not included. See ED. NOTE.]

(12) The following ratings are for loss of external rotation of the hip joint: [Ratings not included. See ED. NOTE.]

(13) The following ratings are for external rotation ankylosis of the hip joint: [Ratings not included. See ED. NOTE.]

(14) When two or more ankylosis positions are documented, select the one direction representing the largest impairment. That will be the impairment value for the hip represented by ankylosis.

(15) A value of 13% shall be determined for a total hip replacement (both femoral and acetabular components involved). If a total hip replacement surgery occurs following an earlier femoral head replacement surgery pursuant to 436-035-0230(5), both impairment values shall be rated.

(16) A value of 5% shall be awarded for a repeat total hip replacement surgery.

(17) Total value for loss of range of motion is obtained by adding (not combining) the values for each range of motion.

(18) The final value for the hip is obtained by combining (not adding) the values in sections (15), (16) and (17) of this rule.

(19) Healed displaced fractures in the hip may cause leg length discrepancies. Impairment shall be determined pursuant to OAR 436-035-0230.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0481; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0350

General Spinal Findings

(1) The following ratings are for fractured vertebrae: [Tables not included. See ED. NOTE.]

(a) For a compression fracture of a single vertebral body: [Tables not included. See ED. NOTE.]

(b) A fracture of one or more of the posterior elements of a vertebra (spinous process, pedicles, laminae, articular processes, or transverse processes) is valued per vertebra as follows: [Tables not included. See ED. NOTE.]

(2) For the purposes of this section, the cervical, thoracic, and lumbosacral regions are considered separate body parts. Values determined within one body part are first added, then the total impairment value is obtained by combining the different body part values. The following values are for surgical procedures performed on the spine.

(3) For injuries that result in loss of strength in the back, refer to OAR 436-035-0330(17) and (18).

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0610, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-19-88; WCD 5-1988(Temp), f. 9-2-88, cert. ef. 8-19-88;

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WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0490; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91 & cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0375

Abdomen

For injuries that result in permanent damage to the abdominal wall, 5% impairment is given if the physician places permanent restriction(s) on the worker which necessitates a reduction in the strength/lifting category of the job that the worker was performing at the time of injury.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & ORS 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-19-88; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0380

Cardiovascular System

(1) Impairments of the cardiovascular system are determined based on objective findings that result in the following conditions: valvular heart disease, coronary heart disease, hypertensive cardiovascular disease, cardiomyopathies, pericardial disease, or cardiac arrhythmias. Each of these conditions will be described and quantified. In most circumstances, the physician should observe the patient during exercise testing.

(2) VALVULAR HEART DISEASE: Impairment resulting from work related valvular heart disease is rated according to the following classes: [Ratings not included. See ED. NOTE.]

(3) CORONARY HEART DISEASE: Impairment resulting from work related coronary heart disease is rated according to the following classes: [Ratings not included. See ED. NOTE.]

(4) HYPERTENSIVE CARDIOVASCULAR DISEASE: Impairment resulting from work related hypertensive cardiovascular disease is rated according to the following classes: [Ratings not included. See ED. NOTE.]

(5) CARDIOMYOPATHY: Impairment resulting from work related cardiomyopathies is rated according to the following classes: [Ratings not included. See ED. NOTE.]

(6) PERICARDIAL DISEASE: Impairment resulting from work related pericardial disease is rated according to the following classes: [Ratings not included. See ED. NOTE.]

(7) ARRHYTHMIAS: Impairment resulting from work related cardiac arrhythmias* is rated according to the following classes: [Ratings not included. See ED. NOTE.]

(8) For heart transplants an impairment value of 50% is given. This value is combined with any other findings of impairment of the heart.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0640, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-19-88; WCD 5-1988(Temp), f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0520; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0385

Respiratory System

(1) For the purpose of this rule, the following definitions apply:

(a) FVC is Forced Vital Capacity.

(b) FEV1 is Forced Expiratory Volume in the first second.

(c) Dco refers to diffusing capacity of carbon monoxide.

(d) VO2 Max is Measured Exercise Capacity.

(2) Lung impairment is determined according to the following classes: [Ratings not included. See ED. NOTE.]

(3) LUNG CANCER — All persons with lung cancers as a result of a compensable industrial injury or occupational disease are to be considered Class 4 impaired at the time of diagnosis. At a re-evaluation, one year after the diagnosis is established, if the person is found to be free of all evidence of tumor, then he or she should be rated according to the physiologic parameters in OAR 436-035-0385(2). If there is evidence of tumor, the person is determined to have Class 4 impairment.

(4) ASTHMA — Reversible obstructive airway disease due to a compensable occupational disease or illness is rated according to the classes of respiratory impairment described in section (2) of this rule. The impairment is based on the best of three successive tests performed at least one week apart at a time when the patient is receiving optimal medical therapy. In addition, a worker may also have impairment determined under OAR 436-035-0450.

(5) ALLERGIC RESPIRATORY RESPONSES — For workers who have developed an allergic respiratory response to physical, chemical, or biological agents refer to OAR 436-035-0450. Methacholine inhalation testing is permitted at the discretion of the physician. Where methacholine inhalation testing leaves the worker at risk, level of impairment may be based on review of the medical record.

(6) Impairment from air passage defects is determined according to the following classes: [Ratings not included. See ED. NOTE.]

(7) Residual impairment from a lobectomy is valued based on the physiological parameters found under section (2) of this rule.

(8) For injuries which result in impaired ability to speak, the following table will rate the worker's ability to speak in relation to: Audibility (ability to speak loudly enough to be heard); Intelligibility (ability to articulate well enough to be understood); and Functional Efficiency (ability to produce a serviceably fast rate of speech and to sustain it over a useful period of time).

(a) Class 1, 4% impairment: Can produce speech of sufficient intensity and articular quality to meet most of the needs of everyday speech communication; some hesitation or slowness of speech may exist; certain phonetic units may be difficult or impossible to produce; listeners may require the speaker to repeat.

(b) Class 2, 9% impairment: Can produce speech of sufficient intensity and articular quality to meet many of the needs of everyday speech communication; speech may be discontinuous, hesitant or slow; can be understood by a stranger but may have numerous inaccuracies; may have difficulty being heard in loud places.

(c) Class 3, 18% impairment: Can produce speech of sufficient intensity and articular quality to meet some of the needs of everyday speech communication; often consecutive speech can only be sustained for brief periods; can converse with family and friends but may not be understood by strangers; may often be asked to repeat; has difficulty being heard in loud places; voice tires rapidly and tends to become inaudible after a few seconds.

(d) Class 4, 26% impairment: Can produce speech of sufficient intensity and articular quality to meet few of the needs of everyday speech communication; consecutive speech limited to single words or short phrases; speech is labored and impractically slow; can produce some phonetic units but may use approximations that are unintelligible or out of context; may be able to whisper audibly but has no voice.

(e) Class 5, 33% impairment: Complete inability to meet the needs of everyday speech communication.

(9) Workers with successful permanent tracheostomy or stoma should be rated at 25% impairment of the respiratory system.

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

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-19-88; WCD 5-1988(Temp), f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0390

Cranial Nerves/Brain

(1) Impairment of the First Cranial Nerve (Olfactory) resulting in either complete inability to detect odors or alteration of the sense of smell is 3% impairment.

(2) Ratings given for impairment of the Second Cranial Nerve (Optic) are figured according to their effects on vision under OAR 436-035-0260.

(3) Ratings given for impairment in the Third Cranial Nerve (Oculomotor), Fourth Cranial Nerve (Trochlear), and Sixth Cranial Nerve (Abducens) are determined according to their effects on ocular motility under OAR 436-035-0260.

(4) Ratings given for impairment of the Fifth Cranial Nerve (Trigeminal) are as follows:

(a) For loss or alteration of sensation in the Trigeminal distribution on one side: 10%; on both sides: 35%

(b) The rating given for loss of motor function in one Trigeminal Nerve is 5%.

(c) The rating given for loss of motor function of both Trigeminal Nerves is determined under OAR 436-035-0385 and 436-035-0420.

(5) Ratings given for impairment of the Sixth Cranial Nerve (Abducens) are described in section (3) of this rule.

(6) Ratings given for impairment of the Seventh Cranial Nerve (Facial) are as follows:

(a) No rating is given for loss of sensation from impairment of one or both Facial Nerves.

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(b) If impairment of one or both Facial Nerves results in loss or alteration of the sense of taste, the rating is 3%.

(c) Motor loss on one side of the face due to impairment of the Facial Nerve is rated at 15% for a complete loss, or 5% for a partial loss.

(d) Motor loss on both sides of the face due to impairment of the Facial Nerve is rated at 45% for a complete loss, or 20% for a partial loss.

(7) Ratings given for impairment of the Eighth Cranial Nerve (Auditory) are determined according to their effects on hearing under OAR 436-035-0250. Other ratings for loss of function most commonly associated with this nerve include the following:

(a) For permanent disturbances resulting in disequilibrium which limits activities the impairment is rated according to the following:

(A) 8% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living are performed without assistance.

(B) 23% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living can be performed without assistance, and the worker is unable to operate a motor vehicle.

(C) 48% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living cannot be performed without assistance.

(D) 80% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living cannot be performed without assistance, and confinement to the home or other facility is necessary.

(b) Tinnitus which by a preponderance of medical opinion requires job modification is valued at 5%. No additional impairment value is allowed for "bilateral" tinnitus.

(8) Ratings given for impairment of the Ninth Cranial Nerve (Glossopharyngeal), Tenth Cranial Nerve (Vagus), and Eleventh Cranial Nerve (Cranial Accessory) are as follows:

(a) Impairment of swallowing due to damage to the Ninth, Tenth, and/or Eleventh Cranial Nerves is determined under OAR 436-035-0420.

(b) Speech impairment due to damage to the Ninth, Tenth, and/or Eleventh Cranial Nerves is rated according to the classifications in OAR 436-035-0385(8).

(9) Ratings given for impairment of the Twelfth Cranial Nerve (Hypoglossal) are as follows:

(a) No rating is allowed for loss on one side.

(b) Bilateral loss is rated as in section (8) of this rule.

(10) Impairment for injuries that have resulted in damage to the brain is determined based upon a preponderance of medical opinion which applies and/or describes the following criteria.

(a) The existence and severity of the claimed residuals and impairments must be objectively determined by observation or examination or a preponderance of evidence, and must be within the range reasonably considered to be possible, given the nature of the original injury, based upon a preponderance of medical opinion.

(b) The residuals must be a direct result of organic injury to the brain. For example, emotional or behavioral disturbances must result directly from injury to the brain. Emotional disturbances which are reactive to other residuals, but which are not directly organically based, such as frustration or depressed mood about memory deficits or work limitations, are not included under these criteria and must be addressed separately.

(c) The distinctions between Classes are intended to reflect, at their most fundamental level, the impact of the residuals on two domains: impairment of activities of daily living, and impairment of employment capacity.

(d) Where the residuals from the accepted condition and any direct medical sequelae place the worker between one or more classes, the worker is entitled to be placed in the highest class that describes the worker's impairment. There is no averaging of impairment values when a worker falls between classes.

(e) As used in these rules, Episodic Neurologic Disorder refers to and includes any of the following:

(A) Any type of seizure disorder;

(B) Vestibular disorder, including disturbances of balance and/or sensorimotor integration;

(C) Neuro-ophthalmologic or oculomotor visual disorder, such as diplopia;

(D) Headaches. [Ratings not included. See ED. NOTE.]

(11) For the purpose of section (10) of this rule, the Rancho Los Amigos-Revised levels are based upon the Eight States Levels of Cognitive Recovery developed at the Rancho Los Amigos Hospital and co-authored by Chris Hagen, PhD, Danese Malkumus, M.A., and Patricia Durham,

M.S., in 1972. These levels were revised by Danese Malkumus, M.A., and Kathryn Standenip, O.T.R., in 1974, revised by Chris Hagen, PhD, in 1999 to include ten levels, referred to as Rancho-R.

(12) If a value of impairment is determined under section (10) of this rule, no additional value for speech or psychiatric impairment is allowed.

(13) For brain damage that has resulted in the loss of use or function of any upper or lower extremities, a value may be allowed for the affected body part(s). Refer to the appropriate section of these standards for that determination.

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

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0645, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0530; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0395

Spinal Cord

(1) The spinal cord is concerned with sensory, motor, and visceral functions. Permanent impairment can result from various disorders affecting these functions. Injuries that result in damage to the spinal cord are determined based on a preponderance of objective medical opinion and the following classes: [Ratings not included. See ED. NOTE.]

(2) When a value is granted under section (1) of this rule, no additional impairment value is allowed for reduced range of motion in the spine.

(3) For spinal cord damage that has resulted in the loss of use or function of body part(s) other than upper and lower extremities, a value is given for other affected body part(s) or organ system(s). Refer to the appropriate section of these standards for that determination and combine with impairment valued under this rule.

(4) For spinal cord damage that has resulted in the loss of use or function of any upper or lower extremities, a value is given for the affected body part(s). Refer to the appropriate section of these standards for that determination.

(5) Episodic neurological disorders are determined under OAR 436-035-0390(10).

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0400

Mental Illness

(1) Accepted mental disorders resulting in impairment must be diagnosed by a psychiatrist or other mental health professional as provided for in a Managed Care Organization certified under OAR chapter 436, division 015.

(2) Diagnoses of mental disorders for the purposes of these rules follow the guidelines of the Diagnostic and Statistical Manual of Mental Disorders DSM-IV (1994), published by the American Psychiatric Association.

(3) The physician describes permanent changes in mental function in terms of their affect on the worker's activities of daily living (ADLs), as defined in OAR 436-035-0005(1). Additionally, the physician describes the affect on social functioning and deterioration or decompensation in work or work-like settings as outlined in the AMA Guides to Evaluation of Impairment, 3rd Ed., Revised 1990.

(4) Loss of function attributable to permanent worsening of personality disorders may be stated as impairment only if it interferes with the worker's long-term ability to adapt to the ordinary activities and stresses of daily living. Personality disorders are rated as two classes with gradations within each class based on severity:

(a) Class 1: minimal (0%), mild (6%), or moderate (11%) A worker belongs in class 1 when:

(A) The worker shows little self-understanding or awareness of the mental illness;

(B) Has some problems with judgment;

(C) Has some problems with controlling personal behavior;

(D) Has some ability to avoid serious problems with social and personal relationships; and

(E) Has some ability to avoid self-harm.

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(b) Class 2: minimal (20%), mild (29%), or moderate (38%) A worker belongs in class 2 when:

- (A) The worker shows considerable loss of self control;
- (B) Has an inability to learn from experience; and
- (C) Causes harm to the community or to the self.

(5) Loss of function attributable to permanent symptoms of affective disorders, anxiety disorders, somatoform disorders, and chronic adjustment disorders is rated according to the following classes, with gradations within each class based on the severity of the symptoms/loss of function:

(a) Class 1: (0%) A worker belongs in Class 1 when one or more of the following residual symptoms are noted:

(A) Anxiety symptoms: Require little or no treatment, are in response to a particular stress situation, produce unpleasant tension while the stress lasts, and might limit some activities.

(B) Depressive symptoms: The activities of daily living can be carried out, but the worker might lack ambition, energy, and enthusiasm. There may be such depression-related, mentally-caused physical problems as mild loss of appetite and a general feeling of being unwell.

(C) Phobic symptoms: Phobias the worker already suffers from may come into play, or new phobias may appear in a mild form.

(D) Psychophysiological symptoms: Are temporary and in reaction to specific stress. Digestive problems are typical. Any treatment is for a short time and is not connected with any ongoing treatment. Any physical pathology is temporary and reversible. Conversion symptoms or hysterical symptoms are brief and do not occur very often. They might include some slight and limited physical problems (such as weakness or hoarseness) that quickly respond to treatment.

(b) Class 2: minimal (6%), mild (23%), or moderate (35%). A worker belongs in Class 2 when one or more of the following residual symptoms/loss of functions are noted:

(A) Anxiety symptoms: May require extended treatment. Specific symptoms may include (but are not limited to) startle reactions, indecision because of fear, fear of being alone, and insomnia. There is no loss of intellect or disturbance in thinking, concentration, or memory.

(B) Depressive symptoms: Last for several weeks. There are disturbances in eating and sleeping patterns, loss of interest in usual activities, and moderate retardation of physical activity. There may be thoughts of suicide. Self-care activities and personal hygiene remain good.

(C) Phobic symptoms: Interfere with normal activities to a mild to moderate degree. Typical reactions include (but are not limited to) a desire to remain at home, a refusal to use elevators, a refusal to go into closed rooms, and an obvious reaction of fear when confronted with a situation that involves a superstition.

(D) Psychophysiological symptoms: Require substantial treatment. Frequent and recurring problems with the organs get in the way of common activities. The problems may include (but are not limited to) diarrhea; chest pains; muscle spasms in the arms, legs, or along the backbone; a feeling of being smothered; and hyperventilation. There is no actual pathology in the organs or tissues. Conversion or hysterical symptoms result in periods of loss of physical function that occur more than twice a year, last for several weeks, and need treatment. Symptoms may include (but are not limited to) temporary hoarseness, temporary blindness, temporary weakness in the arms and/or the legs. These problems continue to return.

(c) Class 3: Minimal (50%), mild (66%), or moderate (81%) A worker belongs in Class 3 when one or more of the following residual symptoms/loss of functions are noted:

(A) Anxiety symptoms: Fear, tension, and apprehension interfere with work or the activities of daily living. Memory and concentration decrease or become unreliable. Long-lasting periods of anxiety keep returning and interfere with personal relationships. The worker needs constant reassurance and comfort from family, friends, and coworkers.

(B) Depressive symptoms: Include an obvious loss of interest in the usual activities of daily living, including eating and self-care. These problems are long-lasting and result in loss of weight and an unkempt appearance. There may be retardation of physical activity, a preoccupation with suicide, and actual attempts at suicide. The worker may be extremely agitated on a frequent or constant basis.

(C) Phobic symptoms: Existing phobias are intensified. In addition, new phobias develop. This results in bizarre and disruptive behavior. In the most serious cases, the worker may become home-bound, or even room-bound. Persons in this state often carry out strange rituals which require them to be isolated or protected.

(D) Psychophysiological symptoms: Include tissue changes in one or more body systems or organs. These may not be reversible. Typical reactions include (but are not limited to) changes in the wall of the intestine that

results in constant digestive and elimination problems. Conversion or hysterical symptoms include loss of physical function that occurs often and lasts for weeks or longer. Evidence of physical change follows such events. A symptomatic period (18 months or more) is associated with advanced negative changes in the tissues and organs. These include (but are not limited to) atrophy of muscles in the legs and arms. A common symptom is general flabbiness.

(6) Psychotic disorders are rated based on perception, thinking process, social behavior, and emotional control. Variations in these aspects of mental function are rated according to the following classifications with gradations within each class based on severity:

(a) Class 1: minimal (0%), mild (6%), or moderate (11%) A worker belongs in Class 1 when the following is established:

(A) Perception: The worker misinterprets conversations or events. It is common for persons with this problem to think others are talking about them or laughing at them.

(B) Thinking process: The worker is absent-minded, forgetful, daydreams too much, thinks slowly, has unusual thoughts that recur, or suffers from an obsession. The worker is aware of these problems and may also show mild problems with judgment. It is also possible that the worker may have little self-understanding or understanding of the problem.

(C) Social behavior: Small problems appear in general behavior, but do not get in the way of social or living activities. Others are not disturbed by them. The worker may be over-reactive or depressed or may neglect self-care and personal hygiene.

(D) Emotional control: The worker may be depressed and have little interest in work or life. The worker may have an extreme feeling of well-being without reason. Controlled and productive activities are possible, but the worker is likely to be irritable and unpredictable.

(b) Class 2: minimal (20%), mild (29%), or moderate (38%) A worker belongs in Class 2 when the following is established:

(A) Perception: Workers in this state have fairly serious problems in understanding their personal surroundings. They cannot be counted on to understand the difference between daydreams, imagination, and reality. They may have fantasies involving money or power, but they recognize them as fantasies. Because persons in this state are likely to be overly excited or suffering from paranoia, they are also likely to be domineering, peremptory, irritable, or suspicious.

(B) Thinking process: The thinking process is so disturbed that persons in this state might not realize they are having mental problems. The problems might include (but are not limited to) obsessions, blocking, memory loss serious enough to affect work and personal life, confusion, powerful daydreams or long periods of being deeply lost in thought to no set purpose.

(C) Social behavior: Persons in this state can control their social behavior if they are asked to do so. However, if left on their own, their behavior is so bizarre that others may be concerned. Such behavior might include (but is not limited to) over-activity, disarranged clothing, and talk and/or gestures which neither make sense nor fit the situation.

(D) Emotional control: Persons in this state suffer a serious loss of control over their emotions. They may become extremely angry for little or no reason, they may cry easily, or they may have an extreme feeling of well-being, causing them to talk too much and to little purpose. These behaviors interfere with living and work and cause concern in others.

(c) Class 3: minimal (50%), mild (63%), or moderate (75%) A worker belongs in Class 3 when the following is established:

(A) Perception: Workers in this state suffer from frequent illusions and hallucinations. Following the demands of these illusions and hallucinations leads to bizarre and disruptive behavior.

(B) Thinking process: Workers in this state suffer from disturbances in thought that are obvious even to a casual observer. These include an inability to communicate clearly because of slurred speech, rambling speech, primitive language, and an absence of the ability to understand the self or the nature of the problem. Such workers also show poor judgment and openly talk about delusions without recognizing them as such.

(C) Social behavior: Persons in this state are a nuisance or a danger to others. Actions might include interfering with work and other activities, shouting, sudden inappropriate bursts of profanity, carelessness about excretory functions, threatening others, and endangering others.

(D) Emotional control: Workers in this state cannot control their personal behavior. They might be very irritable and overactive or so depressed they become suicidal.

(d) Class 4: (90%) Workers who belong in Class 4 usually need to be placed in a hospital or institution. Medication may help them to a certain extent. A worker belongs in Class 4 when the following is established:

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(A) Perception: Workers become so obsessed with hallucinations, illusions, and delusions that normal self-care is not possible. Bursts of violence may occur.

(B) Thinking process: Communication is either very difficult or impossible. The worker is responding almost entirely to delusions, illusions, and hallucinations. Evidence of disturbed mental processes may include (but are not limited to) severe confusion, incoherence, irrelevance, refusal to speak, the creation of new words or using existing words in a new manner.

(C) Social behavior: The worker's personal behavior endangers both the worker and others. Poor perceptions, confused thinking, lack of emotional control, and obsessive reaction to hallucinations, illusions, and delusions produce behavior that can result in the worker being inaccessible, suicidal, openly aggressive and assaultive, or even homicidal.

(D) Emotional control: The worker may have either a severe emotional disturbance in which the worker is delirious and uncontrolled or extreme depression in which the worker is silent, hostile, and self-destructive. In either case, lack of control over anger and rage might result in homicidal behavior.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0555, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-065-0540; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0410

Hematopoietic System

(1) Anemia can be impairing when the cardiovascular system cannot compensate for the effects of the anemia. When a worker becomes anemic as a result of an injury or occupational disease, the following values are given:

(a) 0% when there are no complaints or evidence of disease and the usual activities of daily living can be performed; no blood transfusion is required; and the hemoglobin level is 10-12gm/100ml.

(b) 30% when there are complaints or evidence of disease and the usual activities of daily living can be performed with some difficulty; no blood transfusion is required; and the hemoglobin level is 8-10gm/100ml.

(c) 70% when there are signs and symptoms of disease and the usual activities of daily living can be performed with difficulty and with varying amounts of assistance from others; blood transfusion of 2 to 3 units is required every 4 to 6 weeks; and the hemoglobin level is 5-8gm/100ml before transfusion.

(d) 85% when there are signs and symptoms of disease and the usual activities of daily living cannot be performed without assistance from others; blood transfusion of 2 to 3 units is required every 2 weeks, implying hemolysis of transfused blood; and the hemoglobin level is 5-8gm/100ml before transfusion.

(2) White Blood Cell System impairments resulting from injury or occupational disease are rated according to the following classification system:

(a) Class 1: 5% impairment when there are symptoms or signs of leukocyte abnormality and no or infrequent treatment is needed and all or most of the activities of daily living can be performed. An impairment value of 5% is given for splenectomy.

(b) Class 2: 20% impairment when there are symptoms and signs of leukocyte abnormality and continuous treatment is needed but most of the activities of daily living can be performed.

(c) Class 3: 40% impairment when there are symptoms and signs of leukocyte abnormality and continuous treatment is needed and the activities of daily living can be performed with occasional assistance from others.

(d) Class 4: 73% impairment when there are symptoms and signs of leukocyte abnormality and continuous treatment is needed and continuous care is required for activities of daily living.

(3) Hemorrhagic Disorders acquired as a result of an injury or occupational disease may result in 5% impairment if many activities must be avoided and constant endocrine therapy is needed, or anticoagulant treatment with a vitamin K antagonist is required. Hemorrhagic disorders that stem from damage to other organs or body systems are not rated under this section but are rated according to the impairment of the other organ or body system.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0420

Gastrointestinal and Genitourinary Systems

(1) Impairments in mastication (chewing) and deglutition (swallowing) are determined based on the following criteria:

(a) Diet limited to semi-solid or soft foods — 8%

(b) Diet limited to liquid foods — 25%

(c) Eating requires tube feeding or gastrostomy — 50%

(2) Impairment of the upper digestive tract (esophagus, stomach and duodenum, small intestine, pancreas) is valued according to the following classes: [Classes not included. See ED. NOTE.]

(3) Colonic and rectal impairment is rated according to the following classes: [Classes not included. See ED. NOTE.]

(4) Anal impairment is rated according to the following classes: [Classes not included. See ED. NOTE.]

(5) Liver impairment is determined according to the following classes: [Classes not included. See ED. NOTE.]

(6) Biliary tract impairment is determined according to the following classes: [Classes not included. See ED. NOTE.]

(7) Impairment of the Upper Urinary Tract is determined according to the following classes: [Classes not included. See ED. NOTE.]

(8) Impairment of the Bladder: When evaluating permanent impairment of the bladder, the status of the upper urinary tract must also be considered. The appropriate impairment values for both are combined under OAR 436-035-0011(5). Impairment of the bladder is determined according to the following classes: [Classes not included. See ED. NOTE.]

(9) Urethra: When evaluating permanent impairment of the urethra, one must also consider the status of the upper urinary tract and bladder. The values for all parts of the urinary system are combined under OAR 436-035-0011(5). Impairment of the urethra is determined according to the following classes: [Classes not included. See ED. NOTE.]

(10) Penile Sexual Dysfunction: When evaluating permanent impairment due to sexual dysfunction of the penis, one must also consider the status of the urethra upper urinary tract and bladder. The values for all parts of the system are combined under OAR 436-035-0011(6). Loss or alteration of the gonads is valued under OAR 436-035-0430. Impairment due to sexual dysfunction of the penis is determined according to the following classes for men 40 to 65 years of age. [Classes not included. See ED. NOTE.]

(11) Cervix/Uterus: When evaluating permanent impairment of the cervix/uterus, one must also consider the status of the urethra, upper urinary tract and bladder. The values for all parts of the system are combined under OAR 436-035-0011(5). Loss or alteration of the gonads is valued under OAR 436-035-0430. Impairment of the cervix/uterus is determined according to the following classes: [Classes not included. See ED. NOTE.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988(Temp), f. 8-22-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0430

Endocrine System

(1) The assessment of permanent impairment from disorders of the hypothalamic-pituitary axis requires evaluation of (1) primary abnormalities related to growth hormone, prolactin, or ADH; (2) secondary abnormalities in other endocrine glands, such as thyroid, adrenal, and gonads, and; (3) structural and functional disorders of the central nervous system caused by anatomic abnormalities of the pituitary. Each disorder must be evaluated separately, using the standards for rating the nervous system, visual system, and mental and behavioral disorders, and the impairments combined. [Classes not included. See ED. NOTE.]

(2) Impairment of Thyroid function results in either hyperthyroidism or hypothyroidism. Hyperthyroidism is not considered to be a cause of permanent impairment, because the hypermetabolic state in practically all patients can be corrected permanently by treatment. After remission of hyperthyroidism, there may be permanent impairment of the visual or cardiovascular systems, which should be evaluated using the appropriate standards for those systems. [Classes not included. See ED. NOTE.]

(3) Parathyroid: Impairment of Parathyroid function results in either hyperparathyroidism or hypoparathyroidism. In most cases of hyperparathyroidism, surgical treatment results in correction of the primary abnormality, although secondary symptoms and signs may persist, such as renal calculi or renal failure, which should be evaluated according to the appropriate standards. If surgery fails, or cannot be done, the patient may

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require long-term therapy, in which case the permanent impairment may be classified according to the following: [Ratings not included. See ED. NOTE.]

(4) Adrenal Cortex: Impairment of the Adrenal Cortex results in either hypoadrenalism or hyperadrenocorticism.

(a) Hypoadrenalism is a lifelong condition that requires long-term replacement therapy with glucocorticoids and/or mineralocorticoids for proven hormonal deficiencies. Impairments are rated as follows: [Ratings not included. See ED. NOTE.]

(b) Hyperadrenocorticism due to the chronic side effects of nonphysiologic doses of glucocorticoids (iatrogenic Cushing's syndrome) is related to dosage and duration of treatment and includes osteoporosis, hypertension, diabetes mellitus and the effects involving catabolism that result in protein myopathy, striae, and easy bruising. Permanent impairment ranges from 5% to 78%, depending on the severity and chronicity of the disease process for which the steroids are given. On the other hand, with diseases of the pituitary-adrenal axis, impairment may be classified according to severity: [Classes not included. See ED. NOTE.]

(5) Adrenal Medulla: Impairment of the Adrenal Medulla results from pheochromocytoma and is classified as follows: [Ratings not included. See ED. NOTE.]

(6) Pancreas: Impairment of the pancreas results in either diabetes mellitus or in hypoglycemia.

(a) Diabetes mellitus is rated according to the following classes: [Classes not included. See ED. NOTE.]

(b) Hypoglycemia is rated according to the following classes: [Classes not included. See ED. NOTE.]

(7) Gonadal Hormones: A patient with anatomic loss or alteration of the gonads that results in a loss or alteration in the ability to produce and regulate the gonadal hormones receives a value of 3% impairment for unilateral loss or alteration and 5% for bilateral loss or alteration. Loss of the cervix/uterus or penile sexual function is valued under OAR 436-035-0420.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0440

Integument and Lacrimal System

(1) If the worker has developed an immunologic reaction to physical, chemical or biological agents, impairment will also be valued under OAR 436-035-0450.

(2) Impairments of the integumentary system may or may not show signs or symptoms of skin disorder upon examination but are rated according to the following classes: [Classes not included. See ED. NOTE.]

(3) If either too little or too much tearing results in a worker's being restricted from regular work, and the condition is not an immunological reaction, a value is assigned as follows:

(a) 3% when the reaction is a nuisance but does not prevent most regular work-related activities; or

(b) 8% when the reaction prevents some regular work-related activities; or

(c) 13% when the reaction prevents most regular work-related activities.

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-035-0450

Immune System

When exposure to physical, chemical, or biological agents has resulted in the development of an immunological response, impairment of the immune system is valued as follows:

(1) 3% when the reaction is a nuisance but does not prevent most regular work related activities; or

(2) 8% when the reaction prevents some regular work related activities; or

(3) 13% when the reaction prevents most regular work related activities.

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

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 under ORS 656.726(4)(f)(D) 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 under ORS 656.726(4)(f)(D) 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 under ORS 183.335(6)(a).

(3) Notice of adoption of temporary rules will be given by mailing a copy of the temporary rule to the affected parties and to others as provided in OAR 436-001-0000(3).

Stat. Auth.: ORS 656.726(3)

Stats Implemented: ORS 656.005, 656.214, 656.268, 656.726

Hist.: WCD 16-1992(Temp), Case #A58-7576 & Case #D60-5352, f. & cert. 12-31-92 - 6-29-93; WCD 2-1993(Temp), Case #A58-2159, B59-4533, E61-4228, & 159-2031, f. & cert. 4-28-93 - 10-25-93; WCD 4-1993, f. & cert. 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. 5-31-95; 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; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0003

Applicability of Rules

(1) These rules govern claims processing and carry out the provisions of:

(a) ORS 656.210. Temporary total disability;

(b) ORS 656.212. Temporary partial disability;

(c) ORS 656.230. Lump sum payments;

(d) ORS 656.262. Responsibility for processing and payment of compensation, sight drafts, claimant's duty to cooperate with an investigation, acceptance and denial and reporting of claims, and penalties for payment delays;

(e) ORS 656.264. Required reporting of information to the director;

(f) ORS 656.265. Notices of accidents from workers;

(g) ORS 656.268. Insurer claim closures, insurer recovery of overpayments;

(h) ORS 656.273. Aggravation for worsened conditions, procedures, limitations, additional compensation;

(i) ORS 656.277. Request for reclassification of nondisabling claim, nondisabling claim procedure;

(j) ORS 656.307. Determination of responsibility for compensation payments;

(k) ORS 656.325. Required medical examinations, suspension of compensation, injurious practices, claimant's duty to reduce disability, and reduction of benefits for failure to participate in rehabilitation;

(l) ORS 656.331. Notice to worker's attorney; and

(m) ORS 656.726(4). The director's powers and duties generally.

(2) The applicability of these rules is subject to ORS 656.202.

(3) 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 656.210, 656.212, 656.230, 656.262, 656.264, 656.265, 656.268, 656.307, 656.325, 656.331, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.704 & ORS 656.726(4)

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Hist.: WCD 6-1978(Admin), f. & ef. 4-27-78; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0003, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-13-92, cert. ef. 2-1-92; WCD 1-1994(Temp), f. & cert. ef. 3-1-94; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 10-1995(Temp), f. & cert. ef. 8-18-95; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 14-1996(Temp), f. & cert. ef. 5-31-96; WCD 17-1996(Temp), f. 8-5-96, cert. ef. 8-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0005

Definitions

For the purpose of these rules unless the context requires otherwise:

(1) "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.

(2) "Authorized nurse practitioner" means a nurse practitioner authorized to provide compensable medical services under ORS 656.245 and OAR 436-010.

(3) "Designated Paying Agent" means the insurer temporarily ordered responsible to pay compensation for a compensable injury under ORS 656.307.

(4) "Director" or "director" means the Director of the Department of Consumer and Business Services or the director's designee for the matter, unless the context requires otherwise.

(5) "Disposition" or "claim disposition" means the written agreement as provided in ORS 656.236 in which a claimant agrees to release rights, or agrees to release an insurer or self-insured employer from obligations, under ORS 656.001 to 656.794, except for medical services, in an accepted claim. The term "compromise and release" has the same meaning.

(6) "Division" or "division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(7) "Employer" means a subject employer as defined in ORS 656.023.

(8) "Employment on call" means sporadic, unscheduled employment at the call of an employer without recourse if the worker is unavailable.

(9) "Health insurance," as defined under ORS 731.162, means all insurance against bodily injury, illness or disability, and the resultant expenses, except for workers' compensation coverage.

(10) "Inpatient" means an injured worker who is admitted to a hospital prior to and extending past midnight for treatment and lodging.

(11) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon; or, an employer or employer group which has been certified under ORS 656.430 that it meets the qualifications of a self-insured employer under ORS 656.407.

(12) "Lump sum" means the payment of all or any part of a permanent partial disability award in one payment.

(13) "Physical rehabilitation program" means any services provided to an injured worker to prevent the injury from causing continuing disability.

(14) "Suspension of compensation" means:

(a) No temporary disability, permanent total disability or medical and related service benefits shall accrue or be payable during the period of suspension; and

(b) Vocational assistance and payment of permanent partial disability benefits shall be stayed during the period of suspension.

(15) "Third party administrator" is the contracted agent for an insurer, as defined by these rules, authorized to process claims and make payment of compensation on behalf of the insurer.

(16) "Written" and its variations mean that which is expressed in writing, including electronic transmission.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.704 & 656.726(4)

Hist.: WCD 6-1978(Admin), f. & ef. 4-27-78; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0005, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-13-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0008

Administrative Review and Contested Cases

(1) Any party as defined by ORS 656.005, including an assigned claims agent as a designated processing agent pursuant to ORS 656.054,

aggrieved by an action taken pursuant to these rules in which a worker's right to compensation or the amount thereof is directly in issue, may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS chapter 656 and the Board's Rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law except where otherwise provided in ORS chapter 656.

(2) Contested case hearings of Sanctions and Civil Penalties: Any party as described in section (1) aggrieved by a proposed order or proposed assessment of civil penalty of the director issued under ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The aggrieved person must file a hearing request with the Administrator of the Workers' Compensation Division within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request for hearing is mailed or delivered to the administrator within 60 days of the mailing date of the proposed order or assessment.

(3) Contested cases before the Office of Administrative Hearings: Any party as defined by ORS 656.005 aggrieved by an action or order of the director or division pursuant to these rules, other than as described in section (2), where such action or order qualifies for review as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies for review as a contested case, the process for review will be as follows:

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is mailed or delivered to the administrator within 30 days of the action or from the date of mailing or other service of an order.

(b) The hearing will be conducted by an administrative law judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

(4) Administrative review by the director or designee: Any party aggrieved by an action taken pursuant to these rules by another person except as described in sections (1) through (3) above may request administrative review by the division on behalf of the director. The process for administrative review of such matters will be as follows:

(a) The request for administrative review must be made in writing to the Administrator of the Workers' Compensation Division within 90 days of the action. No administrative review will be granted unless the request specifies the grounds upon which the action is contested and is mailed or delivered to the administrator within 90 days of the contested action unless the director or the director's designee determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) In the course of the review, the division may request or allow such input or information from the parties deemed to be helpful.

(c) The division's determination will specify whether it is a final order or whether an aggrieved party may request a contested case hearing before the Office of Administrative Hearings pursuant to ORS 183.310.

(d) The hearing request must comply with the procedures provided in section (3) above.

Stat. Auth.: ORS 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.245, 656.260, 656.704, 656.726(4), 656.740(1)

Hist.: WCD 6-1978(Admin), f. & ef. 4-27-78; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0098, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0009

Access to Department of Consumer and Business Services Workers' Compensation Claim File Records

(1) Pursuant to ORS 192.430 and OAR 440-005-0015(1) the director, as custodian of public records, promulgates this rule to protect the integrity of claim file records and prevent interference with the regular discharge of the department's duties.

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(2) The department rules on Access of Public Records, Fees for Record Search and Copies of Public Records are found in OAR 440-005. Payment of fees for access to records must be made in advance unless the director determines otherwise. Workers and insurers of record, their legal representatives and third-party administrators shall receive a first copy of any document free. Additional copies shall be provided at the rates set forth in OAR 440-005.

(3) Any person has a right to inspect nonexempt public records. The statutory right to "inspect" encompasses a right to examine original records. It does not include a right to request blind searches for records not known to exist. The director will retain or destroy records according to retention schedules published by the Secretary of State, Archives Division.

(4) Pursuant to ORS 192.502(19) workers' compensation claims records are exempt from public disclosure. Access to workers' compensation claims records will be granted at the sole discretion of the director in accordance with this rule, under the following circumstances:

(a) When necessary for insurers, self-insured employers and third-party claims administrators and their legal representatives for the sole purpose of processing workers' compensation claims. A request by telephone or facsimile transmission will be accepted, but requires provision of the claimant's social security number and insurer claim number in addition to the information required in section (7).

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim. Such circumstances include when workers' compensation claims file information is required by a public or private research organization in order to contact injured workers in order to conduct its research. The director may enter into such agreements with such institutions or persons as are necessary to secure the confidentiality of the disclosed records.

(d) When a worker or the worker's representative requests review of the workers' claim record.

(5) The director may release workers' compensation claims records to persons other than those described in section (4) when the director determines such release is in the public interest.

(a) For the purpose of these rules, a "public interest" exists when the conditions set forth in ORS 192.502(19) and subsections (4)(a) through (d) of this rule have been met. The determination whether the request to release workers' compensation claims records meets those conditions shall be at the sole discretion of the director.

(b) The director may enter into written agreements as necessary to ensure that the recipient of workers' compensation claims records under this section uses or provides the information to others only in accordance with these rules and the agreement with the director. The director may terminate such agreements at any time the director determines that one or more of the conditions of the agreement have been violated.

(6) The director may deny or revoke access to workers' compensation claims records at any time the director determines such access is no longer in the public interest or is being used in a manner which violates these rules or any law of the State of Oregon or the United States.

(7) Requests to inspect or obtain copies of workers' compensation claim records must be made in writing or in person and must include:

(a) The name, address and telephone number of the requester;

(b) The reason for requesting the records;

(c) A specific identification of the public record(s) required and the format in which they are required;

(d) The number of copies required;

(e) The account number of the requester, when applicable.

(8) Except as prescribed in subsections (4)(a) through (d), a person must submit to the division an attorney retainer agreement or release signed by the claimant in order to inspect or obtain copies of workers' compensation claims records. The director may refuse to honor any release which the director determines is likely to result in disclosed records being used in a manner contrary to these rules. Upon request, the director will review proposed release forms to determine whether the proposed release is consistent with the law and this rule.

Stat. Auth.: ORS 192.502, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.704 & 656.726(4)

Hist.: WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0010

Reporting Requirements

(1) A subject employer must accept notice of a claim for workers' compensation benefits from an injured worker or the worker's representa-

tive. The employer must provide a copy of the "Report of Job Injury or Illness," Form 440-801 (Form 801) to the worker immediately upon request; the form must be readily available for workers to report their injuries. Proper use of this form satisfies ORS 656.265.

(2) A "First Medical Report," Form 440-827 (Form 827), signed by the worker, is written notice of an accident which may involve a compensable injury under ORS 656.265. The signed Form 827 shall start the claim process, but shall not relieve the worker or employer of the responsibility of filing a Form 801. If a worker reports a claim electronically, the insurer may require the worker to sign a medical release form, so the insurer can obtain medical records, pursuant to OAR 436-010-0240, necessary to process the claim.

(3) Employers, except self-insured employers, must report the claim to their insurers no later than five days after notice or knowledge of any claim or accident which may result in a compensable injury. The employer's knowledge date is the earliest of the date the employer (any supervisor or manager) first knew of a claim, or of when the employer has enough facts to reasonably conclude that workers' compensation liability is a possibility. The report must provide the information requested on the Form 801, and shall include, but not be limited to, the worker's name, address, and social security number, the employer's legal name and address, and the data specified by ORS 656.262 and 656.265.

(4) For the purpose of this section, "first aid" means any treatment provided by a person who does not require a license in order to provide the service. If an injured worker requires only first aid, no notice need be given the insurer, unless the worker chooses to file a claim. If a worker signs a Form 801, the claim must be reported to the insurer. If the person must be licensed to legally provide the treatment or if a bill for the service will result, notice must be given to the insurer. When the worker requires only first aid and chooses not to file a claim, the employer must maintain records showing the name of the worker, the date, nature of the injury and first aid provided for one year. These records shall be open to inspection by the director, or any party or its representative. If an employer subsequently learns that such an injury has resulted in medical services, disability or death, the date of that knowledge will be considered as the date on which the employer received notice or knowledge of the claim for the purposes of processing pursuant to ORS 656.262.

(5) The director may assess a civil penalty against an employer delinquent in reporting claims to its insurer in excess of ten percent of the employer's total claims during any quarter.

(6) An employer intentionally or repeatedly paying compensation in lieu of reporting to its insurer claims or accidents which may result in a compensable injury claim may be assessed a civil penalty by the director.

(7) The insurer must process and file claims and reports required by the director in compliance with ORS chapter 656, WCD administrative rules, and WCD bulletins. Such filings shall not be made by computer-printed forms, facsimile transmission (FAX), electronic data interchange (EDI), or other electronic means, unless specifically authorized by the director.

(8) When a claim is received and the insurer does not provide insurance coverage for the worker's employer on the date of injury, the insurer may check for other coverage or forward it to the director. The insurer must do one or the other within three days of determining they did not provide coverage on the date of injury. If the insurer checks for coverage and coverage exists, the insurer must send the claim to the correct insurer within the same three day period. If the insurer checks for coverage and coverage cannot be found, the insurer must forward the claim to the director within the same three day period.

(9) The insurer or self-insured employer and third party administrator, if any, must be identified on all insurer generated workers' compensation forms, including insurer name, third party administrator name (if applicable), address, and phone number of the location responsible for processing the claim.

(10) The insurer must file all disabling claims with the director within 14 days of the insurer's initial decision either to accept or deny the claim. To meet this filing requirement, the Insurer's Report, Form 440-1502 (Form 1502) accompanied by the Form 801, or its electronic equivalent, is to be submitted to the director. However, when the Form 801 is not available within a time frame that would allow a timely filing, a Form 1502, accompanied by a signed Form 827 when available, will satisfy the initial reporting requirement. If the Form 801 is not submitted at the time of the initial filing of the claim, the Form 801 must be submitted within 30 days from the filing of the Form 1502. A Form 801 prepared by the insurer in place of obtaining the form from the employer/worker does not satisfy the filing requirement of the Form 801, unless the employer/worker cannot be

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located, or the form cannot be obtained from the employer/worker due to lack of cooperation, or the form is computer-printed based upon information obtained from the employer and worker. The insurer must submit copies of all acceptance or denial notices not previously submitted to the director with the Form 1502. Form 1502 is used to report claim status and activity to the director.

(11) When submitting an initial compensability decision Form 1502, the insurer must report:

- (a) The status of the claim;
- (b) Reason for filing;
- (c) Whether first payment of compensation was timely, if applicable;
- (d) Whether the claim was accepted or denied timely; and
- (e) Any Managed Care Organization (MCO) enrollment, and the date of enrollment, if applicable.

(12) The insurer must file an additional Form 1502 with the director within 14 days of:

- (a) The date of any reopening of the claim;
- (b) Changes in the acceptance or disability status;
- (c) Any litigation order or insurer's decision that causes reopening of the claim or changes the acceptance or disability status;
- (d) MCO enrollment that occurs after the initial Form 1502 has been filed;
- (e) The insurer's knowledge that a previous Form 1502 contained erroneous information; or
- (f) The date of any denial.

(13) A nondisabling claim must only be reported to the director if it is denied, in part or whole. It must be reported to the director within 14 days of the date of denial. A nondisabling claim which becomes disabling must be reported to the director within 14 days of the date of the status change.

(14) If the insurer voluntarily reopens a qualified claim pursuant to ORS 656.278, it must file a Form 3501 with the director within 14 days of the date the insurer reopens the claim.

(15) The insurer must report a new medical condition reopening on the Form 1502 if the claim cannot be closed within 14 days of the first to occur: acceptance of the new condition, or the insurer's knowledge that interim temporary disability compensation is due and payable.

(16) New condition claims that are ready to be closed within 14 days must be reported on the "Insurer Notice of Closure Summary," Form 440-1503 (Form 1503) at the time the insurer closes the claim. The Form 1503 must be accompanied by the "Modified Notice of Acceptance" and "Updated Notice of Acceptance at Closure" letter.

(17) If, after receiving a claim from a worker or from someone other than the worker on the worker's behalf, the insurer receives written communication from the worker stating the worker never intended to file a claim and wants the claim "withdrawn," the insurer must submit a Form 1502 with a copy of the worker's communication to the director, if the claim had previously been reported.

(18) The director may issue a civil penalty against any insurer delinquent in reporting or in submitting Forms 801, 1502, 1503 or 1644 with a late or error ratio in excess of ten percent during any quarter. For the purposes of this section, a claim or form shall be deemed to have been reported or submitted timely according to the provisions of ORS 656.726(4).

(19) Insurers must make an annual report to the director reporting attorney fees, attorney salaries, and all other costs of legal services paid pursuant to ORS chapter 656. The report must be submitted on forms furnished by the director for that purpose. Reports for each calendar year must be filed not later than March 1 of the following year.

(20) If an insurer elects to process and pay supplemental disability benefits, pursuant to ORS 656.210(5)(a), the insurer does not need to inform the director of their election. The insurer must request reimbursement, pursuant to OAR 436-060-0500, by filing Form 3504 "Supplemental Disability Benefits Quarterly Reimbursement Request" with the director for any quarter during which they processed and paid supplemental disability benefits. If an insurer elects not to process and pay supplemental disability benefits, the insurer must submit Form 3530, "Supplemental Disability Election Notification," to the director. The election remains in effect for all supplemental disability claims the insurer receives until the insurer changes its election. The election is made by the insurer and applies to all third party administrators an insurer may use for processing claims.

(21) An insurer may change its election made under section (20):

- (a) Annually; and
- (b) Once after the division completes its first audit of supplemental disability payments made by the insurer.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 656.262, 656.264, 656.265(6), 656.704, 656.726(4), 656.745

Stats. Implemented: ORS 656.262, 656.264, 656.265, 656.704, 656.726(4) & sec. 3(5)(a), ch. 865, OL 2001

Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0100, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2003(Temp), f. 8-29-03, cert. ef. 9-2-03 thru 2-28-04; WCD 11-2003(Temp), f. & cert. ef. 9-22-03 thru 2-28-03; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0015

Required Notice and Information

(1) When an injured worker's attorney has given written notice of representation, prior or simultaneous written notice must be given to the worker's attorney pursuant to ORS 656.331:

- (a) When the director or insurer requests the worker to submit to a medical examination;
- (b) When the insurer contacts the worker regarding any matter which may result in denial, reduction or termination of the worker's benefits; or
- (c) When the insurer contacts the worker regarding any matter relating to disposition of a claim pursuant to ORS 656.236.

(2) The director shall assess a civil penalty against an insurer who intentionally or repeatedly fails to give notice as required under section (1) of this rule.

(3) The insurer or the third party administrator must provide the pamphlet, "What Happens if I'm Hurt on the Job?," Form 440-1138 (Form 1138), to every injured worker who has a disabling claim with the first time-loss check or earliest written correspondence. For nondisabling claims, the information page, "Understanding workers' compensation claims," Form 440-3283 (Form 3283) may be provided in lieu of Form 1138, unless the worker specifically requests Form 1138.

(4) The insurer must provide Form 3283 to their insured employers for distribution to workers at the time a worker completes a Form 801, for all claims filed.

(5) The insurer must provide the "Notice to Worker," Form 440-3058 (Form 3058) or its equivalent to the worker with the initial notice of acceptance on the claim pursuant to OAR 436-060-0140(6). For the purpose of this rule, an equivalent to the Form 3058 must include all of the statutory and rule requirements.

(6) Additional notices the insurer must send to a worker are contained in OAR 436-060-0018, 436-060-0030, 436-060-0035, 436-060-0095, 436-060-0105, 436-060-0135, 436-060-0140, and 436-060-0180.

(7) When an insurer changes claims processing locations, third party administrators, or self-administration, the insurer must provide at least 10 days prior notice to workers with open or active claims, their attorneys, and attending physicians. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor.

(8) The insurer must provide the worker an explanation of any change in the wage used that differs from what was initially reported in writing to the insurer. Prior to claim closure on a disabling claim, the insurer must send the worker a notice documenting the wage upon which benefits were based and work disability, if applicable, will be determined when the claim is closed. The notice must also explain how the worker can appeal the insurer's wage calculation if the worker disagrees with the wage. The insurer shall resolve disputes regarding wage calculations under OAR 436-060-0025(4).

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

Stat. Auth.: ORS 656.331, 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.331, 656.704 & 656.726(4)

Hist.: WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0017

Release of Claim Document

(1) For the purpose of this rule:

- (a) "Documents" include, but are not limited to, medical records, vocational records, written and automated payment ledgers for both time loss and medical services, payroll records, recorded statements, insurer generated records (insurer generated records exclude a claim examiner's generated file notes, such as documentation or justification concerning setting or adjusting reserves, claims management strategy, or any privileged communications), all forms required to be filed with the director, notices of closure, electronic transmissions, and correspondence between the insurer,

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service providers, claimant, the division and/or the Workers' Compensation Board.

(b) "Possession" means documents making up, or relating to, the insurer's claim record on the date of mailing the documents to the claimant, claimant's attorney or claimant's beneficiary. Any documents that have been received by the insurer five or more working days prior to the date of mailing shall be considered as part of the insurer's claim record even though the documents may not have yet reached the insurer's claim file.

(2) The insurer must date stamp each document upon receipt with the date it is received. The date stamp must include the month, day, year of receipt, and name of the company, unless the document already contains the date information and name of recipient company, as in faxes, e-mail and other electronically transmitted communications.

(3) A request for copies of claim documents must be submitted to the insurer, self-insured employer, or their respective third party administrator, and copied simultaneously to defense counsel, if known.

(4) The insurer must furnish, without cost, legible copies of documents in its possession relating to a claim, upon request of the claimant, claimant's attorney or claimant's beneficiary, at times other than those provided for under ORS 656.268 and OAR chapter 438, as provided in this rule. Except as provided in OAR 436-060-0180, an initial request by anyone other than the claimant or claimant's beneficiary must be accompanied by a worker signed attorney retention agreement or a medical release signed by the worker. The signed medical release must be in a form or format as the director may provide by bulletin. Information not otherwise available through this release, but relevant to the claim, may only be obtained in compliance with applicable state or federal laws. Upon the request of the claimant's attorney, a request for documents shall be considered an ongoing request for future documents received and generated by the insurer for 90 days after the initial mailing date under section (7) or until a hearing is requested before the Workers' Compensation Board. The insurer must provide such new documents to claimant's attorney every 30 days, unless specific documents are requested sooner by the attorney. Such documents must be provided within the time frame of section (7).

(5) Once a hearing is requested before the Workers' Compensation Board, the release of documents is controlled by OAR chapter 438. This rule applies subsequently if the hearing request is withdrawn or when the hearing record is closed, provided a request for documents is renewed.

(6) Upon request, the entire health information record in the possession of the insurer will be provided to the worker or the worker's representative. This includes records from all healthcare providers, except that the following may be withheld:

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

(b) Psychotherapy notes,

(c) Information compiled for use in a civil, criminal, or administration action or proceeding; and

(d) Other reasons specified by federal regulation.

(7) The insurer must furnish copies of documents within the following time frames:

(a) The documents of open and closed files, and/or microfilmed files must be mailed within 14 days of receipt of a request, and copies of documents of archived files within 30 days of receipt of a request.

(b) If a claim is lost or has been destroyed, the insurer must so notify the requester in writing within 14 days of receiving the request for claim documents. The insurer must reconstruct and mail the file within 30 days from the date of the lost or destroyed file notice.

(c) If no documents are in the insurer's possession at the time the request is received, the 14 days within which to provide copies of documents starts when the insurer does receive some documentation on the claim if that occurs within 90 days of receipt of the request.

(d) Documents are deemed mailed when addressed to the last known address of the claimant, claimant's beneficiary or claimant's attorney and deposited in the U.S. Mail.

(8) The documents must be mailed directly to the claimant's or beneficiary's attorney, when the claimant or beneficiary is represented. If the documents have been requested by the claimant or beneficiary, the insurer must inform the claimant or beneficiary of the mailing of the documents to the attorney. The insurer is not required to furnish copies to both the claimant or beneficiary and the attorney. However, if a claimant or beneficiary changes attorneys, the insurer must furnish the new attorney copies upon request.

(9) The director may assess a civil penalty against an insurer who fails to furnish documents as required under this rule. The matrix attached to these rules in Appendix "A" will be used in assessing penalties.

(10) Rule violation complaints about release of requested claims documents must be in writing, mailed or delivered to the division within 180 days of the request for documents, and must include a copy of the request submitted under section (3). When notified by the director that a complaint has been filed, the insurer must respond in writing to the division. The response must be mailed or delivered to the director within 21 days of the date of the division's inquiry letter. A copy of the response, including any attachments, must be sent simultaneously to the requester of claim documents. If the division does not receive a timely response or the insurer provides an inadequate response (e.g. failing to answer specific questions or provide requested documents), a civil penalty may be assessed pursuant to OAR 436-060-0200 against the insurer. Assessment of a penalty does not relieve the insurer of the obligation to provide a response.

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

Stat. Auth.: ORS 656.360, 656.362, 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.704 & ORS 656.726(4)

Hist.: WCD 3-1991, f. 4-18-91, cert. ef. 6-1-91; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0018

Nondisabling/Disabling Reclassification

(1) When the insurer changes the classification of an accepted claim, the insurer must submit an "Insurer's Report," Form 440-1502 to the director, indicating a change in status within 14 days from the date of the new classification. A notice of change of classification must be communicated by issuing a Modified Notice of Acceptance. This notice must include an explanation of the change in status and must be sent to the director, the worker, and the worker's attorney if the worker is represented. If the claim qualifies for closure, the insurer must close the claim under ORS 656.268(5).

(2) The insurer must reclassify a nondisabling claim to disabling within 14 days of receiving information that any condition already accepted meets the disabling criteria in this rule. A claim is disabling if any of the following criteria apply:

(a) Temporary disability is due and payable; or

(b) The worker is medically stationary within one year of the date of injury and the worker will be entitled to an award of permanent disability; or

(c) The worker is not medically stationary, but there is a reasonable expectation that the worker will be entitled to an award of permanent disability when the worker does become medically stationary.

(3) Under ORS 656.262(6)(b)(F) and (7)(a) the insurer must issue a Modified Notice of Acceptance and change the classification from nondisabling to disabling upon acceptance of a new or omitted condition that meets the disabling criteria in this rule.

(4) If a claim has been classified as nondisabling for less than one year after the date of acceptance and the worker believes the claim was or has become disabling, the worker may request reclassification by submitting a written request for review of the classification status to the insurer under ORS 656.277.

(5) Within 14 days of the worker's request, the insurer must review the claim and,

(a) If the classification is changed to disabling, provide notice under this rule; or

(b) If the insurer believes evidence supports denying the worker's request to reclassify the claim, the insurer must send a Notice of Refusal to Reclassify to the worker and the worker's attorney, if the worker is represented. The notice must include the following statement, in bold print:

"If you disagree with this Notice of Refusal to Reclassify, you must appeal by contacting the Workers' Compensation Division within sixty (60) days of the mailing of this notice or you will lose your right to appeal. The address and telephone number of the Workers' Compensation Division are: INSURER: Insert current address and telephone number of the Workers' Compensation Division, Appellate Review Unit, here.."

(6) A worker dissatisfied with the decision in the Notice of Refusal to Reclassify may appeal to the director. Such appeal must be made no later than the 60th day after the Notice is mailed. The appeal must be accompanied by:

(a) A copy of all Notices of Acceptance in the claim,

(b) A copy of the request for reclassification the worker sent to the insurer, and

(c) A copy of the insurer's Notice of Refusal to Reclassify that the worker received in response.

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(7) For claims that are reclassified from nondisabling to disabling within one year from the date of acceptance, the aggravation rights begin with the first valid closure of the claim.

(8) For claims that are not reclassified from nondisabling to disabling within one year from the date of acceptance, the aggravation rights continue to run from the date of injury.

(9) When a claim has been classified as nondisabling for at least one year after the date of acceptance, a worker who believes the claim was or has become disabling may submit a claim for aggravation according to the provisions of ORS 656.273.

(10) Failure of the insurer or self-insured employer to respond timely to a request for reclassification may result in penalties under OAR 436-060-0200.

(11) Notwithstanding (12), once a claim has been accepted and classified as disabling for more than one year from date of acceptance, all aspects of the claim are classified as disabling and remain disabling. Any additional conditions or aggravations subsequently accepted must be processed according to provisions governing disabling claims, including closure under ORS 656.268.

(12) If a claim has been classified as disabling and the insurer determines the criteria for a disabling claim were never satisfied, the insurer may reclassify the claim to nondisabling. The insurer must notify the worker and the worker's representative, if applicable, by issuing a Modified Notice of Acceptance.

(a) The Modified Notice of Acceptance must advise the worker that he or she has 60 days from the date of the notice to appeal the decision.

(b) Appeals of such reclassification decisions are made to the Appellate Review Unit for issuance of a Director's Review order.

(13) The worker's appeal must be in writing. The worker may use the form specified by the director for requesting review of the insurer's claim classification decision.

(14) The worker's appeal under section (6) or (12) must be copied to the insurer.

(15) A worker need not be represented by an attorney to appeal the insurer's classification decision.

(16) The director will acknowledge receipt of the request in writing to the injured worker, the worker's attorney, if any, and the insurer, and initiate the review.

(17) Within 14 days of the director's acknowledgement, the insurer must provide the director and all other parties with the complete medical record and all official actions and notices on the claim. The insurer may be subject to penalties under OAR 436-060-0200 for failure to provide claim documents in a timely manner.

(18) Within the same 14 days, the worker may submit any additional evidence for the director to consider. Copies must be provided to all other parties at the same time.

(19) After receiving and reviewing the required documents, the director will issue a Director's Review order.

(20) The worker and the insurer have 30 days from the mailing date of the Director's Review order to appeal the director's decision to the Hearings Division of the Workers' Compensation Board.

(21) The director may reconsider, abate, or withdraw any Director's Review order before the order becomes final by operation of law.

Stat. Auth.: ORS 656.268, 656.726, 1995 OL Ch 332 & 1999 OL Ch 313
Stats. Implemented: ORS 656.210, 656.212, 656.214, 656.262, 656.268, 656.273, 656.277, 656.745, 656.726, 1999 OL Ch 313 & 2001 OL Ch 350
Hist.: WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0019

Determining and Paying the Three Day Waiting Period

(1) Under ORS 656.210 and 656.212, the three day waiting period is three consecutive calendar days beginning with the first day the worker loses time or wages from work as a result of the compensable injury, subject to the following:

(a) If the worker leaves work but returns and completes the work shift without loss of wages, that day shall not be considered the first day of the three day waiting period.

(b) If the worker leaves work but returns and completes the work shift and receives reduced wages, that day shall be considered the first day of the three day waiting period.

(c) If the worker does not complete the work shift, that day shall be considered the first day of the three day waiting period even if there is no loss of wages. For the purpose of this rule, an attending physician's or authorized nurse practitioner's authorization of temporary disability is not required to begin the waiting period; however, the waiting period would not be due and payable unless authorized.

(2) Under ORS 656.210(3), no disability payment is due the worker for temporary total disability suffered during the first three calendar days after the worker leaves work as a result of a compensable injury, unless the worker is totally disabled after the injury and the total disability continues for a period of 14 consecutive days or unless the worker is admitted as an inpatient to a hospital within 14 days of the first onset of total disability. For the purpose of this rule, admittance as an inpatient to a hospital can be any time following the date of the injury, but must be within 14 days of the first onset of total disability to waive the three day waiting period.

(3) If compensation is due and payable for the three day waiting period, the worker must be paid for one-half day for the initial work day lost if the worker leaves the job during the first half of the shift and does not return to complete the shift. No compensation is due for the initial day of the waiting period if the worker leaves the job during the second half of the shift.

(4) If a worker is employed with varying days off or cyclic work schedules, the three day waiting period shall be determined using the work schedule of the week the worker begins losing time or wages as a result of the injury. If the worker is no longer employed with the employer at injury or does not have an established schedule when the worker begins losing time/wages, the three day waiting period and scheduled days off shall be based on the work schedule of the week the worker was injured.

Stat. Auth.: ORS 656.210, 656.212, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.210 & 656.212

Hist.: WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 9-2003(Temp), f. 8-29-03, cert. ef. 9-2-03 thru 2-28-04; WCD 11-2003(Temp), f. & cert. ef. 9-22-03 thru 2-28-03; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0020

Payment of Temporary Total Disability Compensation

(1) An employer may pay compensation under ORS 656.262(4) with the approval of the insurer pursuant to ORS 656.262(12). Making such payments does not constitute a waiver or transfer of the insurer's duty to determine the worker's entitlement to benefits, or responsibility for the claim to ensure timely benefit payments. The employer must provide adequate payment documentation as the insurer may require to meet its responsibilities.

(2) Pursuant to ORS 656.005(30), no temporary disability is due and payable for any period of time in which the person has withdrawn from the workforce. For the purpose of this rule, a person who has withdrawn from the workforce, includes, but is not limited to:

(a) A person who, prior to reopening under ORS 656.267, 656.273 or 656.278, was not working and had not made reasonable efforts to obtain employment, unless such efforts would be futile as a result of the compensable injury.

(b) A person who was a full time student for at least six months in the 52 weeks prior to injury elects to return to school full time, unless the person can establish a prior customary pattern of working while attending school. For purposes of this subsection, "full time" is defined as twelve or more quarter hours or the equivalent.

(3) No temporary disability is due and payable for any period of time where the insurer has requested from the worker's attending physician or authorized nurse practitioner verification of the worker's inability to work and the physician or authorized nurse practitioner cannot verify it pursuant to ORS 656.262(4)(d), unless the worker has been unable to receive treatment for reasons beyond the worker's control. Before withholding temporary disability under this section, the insurer must inquire of the worker whether a reason beyond the worker's control prevented the worker from receiving treatment. If no valid reason is found or the worker refuses to respond or cannot be located, the insurer must document its file regarding those findings. The insurer must provide the division a copy of the documentation within 20 days, if requested. If the attending physician or authorized nurse practitioner is unable to verify the worker's inability to work, the insurer may stop temporary disability payments and, in place of the scheduled payment, must send the worker an explanation for stopping the temporary disability payments. When verification of temporary disability is received from the attending physician or authorized nurse practitioner, the insurer must pay temporary disability within 14 days of receiving the verification of any authorized period of time loss, unless otherwise denied.

(4) Authorization from the attending physician or authorized nurse practitioner may be oral or written. The insurer at claim closure, or the division at reconsideration of the claim closure, may infer authorization from such medical records as a surgery report or hospitalization record that reasonably reflects an inability to work because of the compensable claim, or from a medical report or chart note generated at the time of, and indicating, the worker's inability to work. No compensation is due and payable after the worker's attending physician or authorized nurse practitioner ceases to authorize temporary disability or for any period of time not authorized by

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the attending physician or authorized nurse practitioner pursuant to ORS 656.262(4)(g).

(5) An insurer may suspend temporary disability benefits without authorization from the division pursuant to ORS 656.262(4)(e) when all of the following circumstances apply:

(a) The worker has missed a regularly scheduled appointment with the attending physician or authorized nurse practitioner;

(b) The insurer has sent a certified letter to the worker and a letter to the worker's attorney, at least ten days in advance of a rescheduled appointment, stating that the appointment has been rescheduled with the worker's attending physician or authorized nurse practitioner; stating the time and date of the appointment; and giving the following notice, in prominent or bold face type:

"You must attend this appointment. If there is any reason you cannot attend, you must tell us before the date of the appointment. If you do not attend, your temporary disability benefits will be suspended without further notice, as provided by ORS 656.262(4)(e)."

(c) The insurer verifies that the worker has missed the rescheduled appointment;

(d) The insurer sends a letter to the worker, the worker's attorney and the division giving the date of the regularly scheduled appointment that was missed, the date of the rescheduled appointment that was missed, the date of the letter being the day benefits are suspended, and the following notice, in prominent or bold face type:

"Since you missed a regular appointment with your doctor, we arranged a new appointment. We notified you of the new appointment by certified mail and warned you that your benefits would be suspended if you failed to attend. Since you failed to attend the new appointment, your temporary disability benefits have been suspended. In order to resume your benefits, you must schedule and attend an appointment with your doctor who must verify your continued inability to work."

(6) If temporary disability benefits end because the insurer or employer:

(a) Speaks by telephone with the attending physician or authorized nurse practitioner, or the attending physician's or authorized nurse practitioner's office, and negotiates a verbal release of the worker to return to any type of work as a result, when no return to work was previously authorized; and

(b) The worker has not already been informed of the release by the attending physician or authorized nurse practitioner or returned to work; then

(c) The insurer must:

(A) Document the facts;

(B) Communicate the release to the worker by mail within 7 days; the communication to the worker of the negotiated return to work release may be contained in an offer of modified employment; and

(C) Advise the worker of their reinstatement rights under ORS chapter 659A.

(7) When concurrent temporary disability is due the worker as a result of two or more accepted claims, the insurers may petition the division to make a pro rata distribution of compensation due under ORS 656.210 and 656.212. The insurer must provide a copy of the request to the worker, and the worker's attorney if represented. The division's pro rata order shall not apply to any periods of interim compensation payable pursuant to ORS 656.262 and also does not apply to benefits pursuant to ORS 656.214 and 656.245. Claims subject to the pro rata order approved by the division must be closed pursuant to OAR 436-030 and ORS 656.268, when appropriate. The insurers shall not unilaterally prorate temporary disability without the approval of the division, except as provided in section (8) of this rule. The division may order one of the insurers to pay the entire amount of temporary disability due or make a pro rata distribution between two or more of the insurers. The pro rata distribution ordered by the division shall be effective only for benefits due as of the date all claims involved are in an accepted status. The order pro rating compensation will not apply to periods where any claim involved is in a deferred status.

(8) When concurrent temporary disability is due the worker as a result of two or more accepted claims involving the same worker, the same employer and the same insurer, the insurer may make a pro rata distribution of compensation due under ORS 656.210 and 656.212 without an order by the division. The worker must receive compensation at the highest temporary disability rate of the claims involved.

(9) If a closure pursuant to ORS 656.268 has been found to be premature and there was an open ended authorization of temporary disability at the time of closure, the insurer must begin payments pursuant to ORS 656.262, including retroactive periods, and pay temporary disability for as long as authorization exists or until there are other lawful bases to terminate temporary disability.

(10) If a denied claim has been determined to be compensable, the insurer must begin temporary disability payments pursuant to ORS

656.262, including retroactive periods, if the time loss authorization was open ended at the time of denial, and there are no other lawful bases to terminate temporary disability.

Stat. Auth.: ORS 656.210(2), 656.245, 656.262, 656.307(1)(c), 656.704, 656.726(4)
Stats. Implemented: ORS 656.210, 656.212, 656.262, 656.307, 656.704, 656.726(4) & sec. 1(30), ch. 865, OL 2001
Hist.: WCB 12-1970, f. 9-21-70, ef. 10-25-70; 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0212, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; Former sec. (6), (7), (8), (9) & (10) Renumbered to 436-060-0025(1) - (10); WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 10-1995(Temp), f. & cert. ef. 8-18-95; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 14-1996(Temp), f. & cert. ef. 5-31-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0025

Rate of Temporary Disability Compensation

(1) The rate of compensation shall be based on the wage of the worker at the time of injury, except in the case of an occupational disease, for which the rate of compensation will be based on the wage as outlined in ORS 656.210(2)(d)(B). Employers shall not continue to pay wages in lieu of statutory temporary total disability payments due. However, pursuant to ORS 656.018(6) the employer is not precluded from supplementing the amount of temporary total disability paid the worker. Employers must separately identify workers' compensation benefits from other payments and shall not have payroll deductions withheld from such benefits.

(2) Notwithstanding section (1), pursuant to ORS 656.262(4)(b), a self-insured employer may continue the same wage with normal deductions withheld (e.g. taxes, medical, and other voluntary deductions) at the same pay interval that the worker received at the time of injury. If the pay interval or amount of wage changes (excluding wage increases), the worker must be paid temporary disability as otherwise prescribed by the workers' compensation law. The claim shall be classified as disabling. The rate of temporary total disability that would have otherwise been paid had continued wages not occurred and the period of disability will be reported to the division.

(3) The rate of compensation for regularly employed workers shall be computed as outlined in ORS 656.210 and this rule. "Regularly employed" means actual employment or availability for such employment.

(a) Monthly wages shall be divided by 4.35 to determine weekly wages. Seasonal workers paid monthly must have their weekly wages determined pursuant to OAR 436-060-0025(5).

(b) For workers employed through union hall call board insurers must compute the rate of compensation on the basis of a five-day work week at 40 hours a week, regardless of the number of days actually worked per week.

(4) The insurer shall resolve wage disputes by contacting the employer to confirm the correct wage and then contacting the worker with that information. If the worker does not agree, the worker may bring the dispute to the division for resolution.

(5) The rate of compensation for workers regularly employed, but paid on other than a daily or weekly basis, or employed with unscheduled, irregular or no earnings shall be computed on the wages determined by this rule.

(a) For workers employed seasonally, on call, paid hourly, paid by piece work or with varying hours, shifts or wages:

(A) Insurers must use the worker's average weekly earnings with the employer at injury for the 52 weeks prior to the date of injury. For workers with multiple employers at the time of injury who qualify pursuant to ORS 656.210(2)(b) and OAR 436-060-0035, insurers shall average all earnings for the 52 weeks prior to the date of injury. For workers employed less than 52 weeks or where extended gaps exist, insurers must use the actual weeks of employment (excluding any extended gaps) with the employer at injury or all earnings, if the worker qualifies pursuant to ORS 656.210(2)(b) and OAR 436-060-0035, up to the previous 52 weeks. For the purpose of this rule, gaps shall not be added together and must be considered on a claim-by-claim basis; the determination of whether a gap is extended must be made in light of its length and of the circumstances of the individual employment relationship itself, including whether the parties contemplated that such gaps would occur when they formed the relationship. For workers employed less than four weeks, insurers shall use the intent of the wage earning agreement as confirmed by the employer and the worker. For the purpose of this section, the wage earning agreement may be either oral or in writing.

(B)(i) Where there has been a change in the wage earning agreement due only to a pay increase or decrease during the 52 weeks prior to the date

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of injury, insurers must use the worker's average weekly hours worked for the 52 week period, or lesser period as required in (5)(a)(A) of this section, multiplied by the wage at injury to determine the worker's current average weekly earnings.

(ii) Where there has been a change in the wage earning agreement due to a change of hours worked, change of job duties, or for other reasons either with or without a pay increase or decrease, during the 52 weeks prior to the date of injury, insurers must average earnings for the weeks worked under the most recent wage earning agreement, calculated by the method described in (5)(a)(A).

(iii) For workers employed less than four weeks under a changed wage earning agreement as described in this subsection, insurers must use the intent of the most recent wage earning agreement as confirmed by the employer and the worker.

(iv) For determining benefits under this rule for occupational disease claims, insurers must use the wage at the date of disability, if the worker was working at the time of medical verification of the inability to work, or the wage at the date of last regular employment, if the worker was not working due to the injury at the time of medical verification of the inability to work in place of "the date of injury."

(b) Workers employed through a temporary service provider on a "temporary basis," or a worker-leasing company as defined in OAR 436-050, must have their weekly wage determined by the method provided in subsection (a) of this section. However, each job assignment shall not be considered a new wage earning agreement.

(c) For workers paid salary plus considerations (e.g. rent, utilities, food, etc.) insurers must compute the rate on salary only if the considerations continue during the period the worker is disabled due to the injury. If the considerations do not continue, the insurer must use salary plus a reasonable value of those considerations. Expenses incurred due to the job and reimbursed by the employer (e.g. meals, lodging, per diem, equipment rental) are not considered part of the wage.

(d) Earnings from a second job will be considered for calculating temporary partial disability only to the extent that the post-injury income from the second job exceeds the pre-injury income from the second job (i.e., increased hours or increased wage).

(e) For workers employed where tips are a part of the worker's earnings insurers must use the wages actually paid, plus the amount of tips required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of 1954, as amended, or the amount of actual tips reported by the worker, whichever amount is greater.

(f) Insurers shall consider overtime hours only when the worker worked overtime on a regular basis. Overtime earnings must be included in the computation at the overtime rate. For example, if the worker worked one day of overtime per month, use 40 hours at regular wage and two hours at the overtime wage to compute the weekly rate. If overtime varies in hours worked per day or week, use the averaging method described in subsection (a). One-half day or more will be considered a full day when determining the number of days worked per week.

(g) Bonus pay shall be considered only when provided as part of the written or verbal employment contract as a means to increase the worker's wages. End-of-the-year and other one time bonuses paid at the employer's discretion shall not be included in the calculation of compensation.

(h) Incentive pay shall be considered only when regularly earned. If incentive pay earnings vary, use the averaging method described in subsection (a).

(i) Covered workers with no wage earnings such as volunteers, jail inmates, etc., must have their benefits computed on the same assumed wage as that upon which the employer's premium is based.

(j) For workers paid by commission only or commission plus wages insurers must use the worker's average commission earnings for previous 52 weeks, if available. For workers without 52 weeks of earnings, insurers must use the assumed wage on which premium is based. Any regular wage in addition to commission must be included in the wage from which compensation is computed.

(k) For workers who are sole proprietors, partners, officers of corporations, or limited liability company members including managers, insurers must use the assumed wage on which the employer's premium is based.

(l) For school teachers or workers paid in a like manner, insurers must use the worker's annual salary divided by 52 weeks to arrive at weekly wage. Temporary disability benefits shall extend over the calendar year.

(m) For workers with cyclic schedules, insurers must average the hours of the entire cycle to determine the weekly wage. For purposes of temporary disability payments, the cycle shall be considered to have no scheduled days off. For example: A worker who works ten hours for seven

days, has seven scheduled days off, then repeats the cycle, is considered to have a 14 day cycle. The weekly wage and payment schedule would be based on 35 hours a week with no scheduled days off.

(6) When a working shift extends into another calendar day, the date of injury shall be the date used for payroll purposes by the employer.

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

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

Stat. Auth.: ORS 656.210(2), 656.704 & 656.726(4)

Stats. Implemented: ORS 656.210, 656.704, 656.726(4) & sec. 3(2)(a)-(c), ch. 865, OL 2001 Hist.: WCB 12-1970, f. 9-21-70, ef. 10-25-70; 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0212, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; Renumbered from 436-060-0020 former sections (6), (7), (8), (9) & (10); WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0030

Payment of Temporary Partial Disability Compensation

(1) The amount of temporary partial disability compensation due a worker shall be determined by:

(a) Subtracting post-injury wage earnings by the worker from any kind of work from

(b) The wage used to compute the rate of compensation at the time of injury; then

(c) Dividing the difference by the wage earnings used in subsection (b) to arrive at the percentage of loss of wages; then

(d) Multiplying the current temporary total disability compensation rate by the percentage of loss of wages in subsection (c).

(2) Notwithstanding section (1), for workers whose rate of compensation is based on an assumed wage, "post-injury wage earnings" will be that proportion of the assumed wage which the hours worked during the period of temporary partial disability represent as a percentage of the hours worked prior to the injury.

(3) An insurer shall cease paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) from the date an injured worker begins wage earning employment, prior to claim closure, unless the worker refuses modified work pursuant to ORS 656.268(4)(c)(A) through (F). If the worker is with a new employer and upon request of the insurer to provide wage information, it shall be the worker's responsibility to provide documented evidence of the amount of any wages being earned. Failure to do so shall be cause for the insurer to assume that post-injury wages are the same as or higher than the worker's wages at time of injury.

(4) For the purpose of section (5) of this rule:

(a) "Commute" means the lesser of the distance traveled from the worker's residence at the time of injury to the work site or the worker's residence at the time of the modified work offer to the work site;

(b) "Where the worker was injured" means the location where the worker customarily reported or worked at the time of injury; and

(c) "Temporary employees" has the same meaning as defined in OAR 436-050-0420.

(5) Pursuant to ORS 656.325(5)(a), an insurer shall cease paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) as if the worker had begun the employment when an injured worker fails to begin wage earning employment, under the following conditions:

(a) The employer or insurer:

(A) Notifies the attending physician or authorized nurse practitioner of the physical tasks to be performed by the injured worker;

(B) Notifies the attending physician or authorized nurse practitioner of the location of the modified work offer; and

(C) Asks the attending physician or authorized nurse practitioner if the worker can, as a result of the compensable injury, physically commute to and perform the job.

(b) The attending physician or authorized nurse practitioner agrees the employment appears to be within the worker's capabilities and the commute is within the physical capacity of the worker; and

(c) The employer or insurer has confirmed the offer of employment in writing to the worker stating:

(A) The beginning time, date and place;

(B) The duration of the job, if known;

(C) The wages;

(D) An accurate description of the physical requirements of the job;

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(E) that the attending physician or authorized nurse practitioner has found the job to be within the worker's capabilities and the commute within the worker's physical capacity;

(F) the worker's right to refuse the offer of employment without termination of temporary total disability if any of the following conditions apply:

(i) The offer is at a site more than 50 miles from where the worker was injured, unless the work site is less than 50 miles from the worker's residence, or the intent of the employer and worker at the time of hire or as established by the employment pattern prior to the injury was that the job involved multiple or mobile work sites and the worker could be assigned to any such site. Examples of such sites include, but are not limited to logging, trucking, construction workers, and temporary employees;

(ii) The offer is not with the employer at injury;

(iii) The offer is not at a work site of the employer at injury;

(iv) The offer is not consistent with existing written shift change policy or common practice of the employer at injury or aggravation; or

(v) The offer is not consistent with an existing shift change provision of an applicable union contract; and

(G) The following notice, in prominent or bold face type:

"If you refuse this offer of work for any of the reasons listed in this notice, you should write to the insurer or employer and tell them your reason(s) for refusing the job. If the insurer reduces or stops your temporary total disability and you disagree with that action, you have the right to request a hearing. To request a hearing you must send a letter objecting to the insurer's action(s) to the Worker's Compensation Board, 2601 25th Street SE, Suite 150, Salem, Oregon 97302-1282."

(6) Pursuant to ORS 656.325(5)(b), the insurer shall cease paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) as if the worker had begun the employment when the attending physician or authorized nurse practitioner approves employment in a modified job that would have been offered to the worker if the worker had not been terminated from employment for violation of work rules or other disciplinary reasons, under the following conditions:

(a) The employer has a written policy of offering modified work to injured workers;

(b) The insurer has written documentation of the hours available to work and the wages that would have been paid if the worker had returned to work in order to determine the amount of temporary partial disability compensation under section (1);

(c) The attending physician or authorized nurse practitioner has been notified by the employer or insurer of the physical tasks to be performed by the injured worker; and

(d) The attending physician or authorized nurse practitioner agrees the employment appears to be within the worker's capabilities.

(7) Pursuant to ORS 656.325(5)(c), the insurer shall cease paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) as if the worker had begun the employment when the attending physician or authorized nurse practitioner approves employment in a modified job whether or not such a job is available if the worker is a person present in the United States in violation of federal immigration laws, under the following conditions:

(a) The insurer has written documentation of the hours available to work and the wages that would have been paid if the worker had returned to work in order to determine the amount of temporary partial disability compensation under section (1);

(b) The attending physician or authorized nurse practitioner has been notified by the employer or insurer of the physical tasks that would have been performed by the injured worker; and

(c) The attending physician or authorized nurse practitioner agrees the employment appears to be within the worker's capabilities.

(8) Temporary partial disability must be paid at the full temporary total disability rate as of the date a modified job no longer exists or the job offer is withdrawn by the employer. This includes, but is not limited to, termination of temporary employment, layoff or plant closure. A worker who has been released to and doing modified work at the same wage as at the time of injury from the onset of the claim shall be included in this section. For the purpose of this rule, when a worker who has been doing modified work quits the job or the employer terminates the worker for violation of work rules or other disciplinary reasons it is not a withdrawal of a job offer by the employer, but shall be considered the same as the worker refusing wage earning employment pursuant to ORS 656.325(5)(a). This section does not apply to those situations described in sections (5), (6), and (7) of this rule.

(9) When the worker's disability is partial only and temporary in character, temporary partial disability compensation pursuant to ORS 656.212 shall continue until:

(a) The attending physician or authorized nurse practitioner verifies that the worker can no longer perform the modified job and is again temporarily totally disabled;

(b) The compensation is terminated by order of the division or by claim closure by the insurer pursuant to ORS 656.268; or

(c) The compensation is lawfully suspended, withheld or terminated for any other reason.

(10) In determining failure on the part of the worker in section (5) and for purposes of subsection (1)(a), "post-injury wages" are the wages the worker could have earned by accepting a job offer, or actual wages earned, whichever is greater, and any unemployment, sick or vacation leave payments received.

(11) If temporary disability benefits end because the insurer or employer:

(a) Speaks by telephone with the attending physician or authorized nurse practitioner, or the attending physician's or authorized nurse practitioner's office, and negotiates a verbal release of the worker to return to any type of work as a result, when no return to work was previously authorized; and

(b) The worker has not already been informed of the release by the attending physician or authorized nurse practitioner or returned to work; then

(c) The insurer must:

(A) Document the facts;

(B) Communicate the release to the worker by mail within 7 days; the communication to the worker of the negotiated return to work release may be contained in an offer of modified employment; and

(C) Advise the worker of their reinstatement rights under ORS chapter 659A.

(12) The insurer must provide the injured worker and the worker's attorney a written notice of the reasons for changes in the compensation rate, and the method of computation, whenever a change is made.

Stat. Auth.: ORS 656.212, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.212, 656.325(5), 656.704, 656.726(2) & ch 865(12) (4)(c) OL 2001

Hist.: WCD 6-1978(Admin), f. & ef. 4-27-78; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0222, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 1-1994(Temp), f. & cert. ef. 3-1-94; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 10-1995(Temp), f. & cert. ef. 8-18-95; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0035

Supplemental Disability for Workers with Multiple Jobs at the Time of Injury

(1) For the purpose of this rule:

(a) "Assigned processing administrator" is the company or business whom the director has selected and authorized to process and pay supplemental disability benefits on behalf of the director, when the insurer has elected not to process and pay these benefits.

(b) "Primary job" means the job at which the injury occurred.

(c) "Secondary job" means any other job(s) held by the worker in Oregon subject employment at the time of injury.

(d) "Temporary disability" means wage loss replacement for the primary job.

(e) "Supplemental disability" means wage loss replacement for the secondary job(s) that exceeds the temporary disability, up to, but not exceeding, the maximum established by ORS 656.210.

(f) "Verifiable documentation" means information which provides:

(A) Identification of the Oregon subject employer(s) and the time period that establishes the worker held the secondary job, in addition to the primary job, at the time of injury; and

(B) Adequate information to calculate the average weekly wage in accordance with OAR 436-060-0025.

(g) "Insurer" includes third party administrator.

(2) The insurer shall establish the temporary disability rate by multiplying the weekly wage, determined pursuant to OAR 436-060-0025, from the primary employer by 66 2/3% (.6667). If the result meets or exceeds the maximum temporary disability rate, the worker is not eligible for supplemental disability benefits.

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(3) Within five business days of receiving notice or knowledge of employment in addition to the primary job on a claim on which the temporary disability rate for the primary job does not meet or exceed the maximum rate, the insurer must send a worker an initial notice informing the worker what type of information the insurer or the assigned processing administrator must receive to determine the worker's eligibility for supplemental disability. If the insurer has elected not to process and pay these benefits, the insurer must copy the assigned processing administrator with the notice to the worker. The notice must contain the name, address, and telephone number of the assigned processing administrator, and must also clearly advise the worker that the verifiable documentation must be sent to the assigned processing administrator.

(4) The initial notice in section (3) must also inform the worker that if the verifiable documentation is not received, the insurer will determine the worker's temporary disability rate based only on the job at which the injury occurred. If the insurer later receives the documentation, the insurer must determine the worker's eligibility for supplemental disability benefits and, if the worker is found eligible, re-calculate the temporary disability rate. Additional benefits due, but not yet paid because of the worker's prior failure to provide documentation, must be paid retroactively. Any delay in the payment of a higher disability rate because of the worker's failure to provide verifiable documentation under this paragraph will not result in a penalty under ORS 656.262(11).

(5) Within 14 days of receiving the worker's verifiable documentation, the insurer or the assigned processing administrator must determine the worker's eligibility for supplemental disability and must communicate the decision to the worker and the worker's representative, if any, in writing. The letter must also advise the worker why he/she is not eligible when that is the decision and how to appeal the decision, if the worker disagrees with the decision.

(6) A worker is eligible if:

(a) The worker was employed at the secondary job by an Oregon subject employer at the time of the injury,

(b) The worker provides notification of a secondary job to the insurer within 30 days of the insurer's receipt of the initial claim, and

(c) The worker's temporary disability rate from wages at the primary job does not meet or exceed the maximum rate under section (2) of this rule.

(7) The insurer or the assigned processing administrator must calculate supplemental disability for an eligible worker by adding all earnings the worker received from all subject employment, pursuant to ORS 656.210(2)(a)(B). In no case shall an eligible worker receive less compensation than would be paid if based solely on wages from the primary employer.

(8) If the temporary disability rate from the primary employer does not meet or exceed the maximum rate, the insurer or the assigned processing administrator must combine the weekly wages, determined pursuant to OAR 436-060-0025, for each employer and multiply by 66 2/3% (.6667) to establish the combined disability rate up to the maximum rate. This is the base amount on which the worker's combined benefits will be calculated.

(9) No three-day waiting period applies to supplemental disability benefits.

(10) The worker's scheduled days off for the job at which the injury occurred shall be used to calculate and pay supplemental disability.

(11) To establish the combined partial disability benefits when the worker has post injury wages from either job, the insurer or the assigned processing administrator must use all post injury wages from both primary and all secondary employers. The insurer or the assigned processing administrator must calculate the amount due the worker based on the combined wages at injury and combined post injury wages using the temporary partial disability calculation in OAR 436-060-0030. The insurer or the assigned processing administrator must then calculate the amount due from the primary job based only on the primary wages at injury and the primary post injury wages. That amount shall be subtracted from the amount due the worker; the remainder is the supplemental disability amount.

(12) If the worker receives post injury wages from the secondary job equal to or greater than the secondary wages at the time of injury, no supplemental disability is due.

(13) If the worker returns to a job not held at the time of the injury, the insurer or the assigned processing administrator must process supplemental disability under the same terms, conditions and limitations as OAR 436-060-0030.

(14) Supplemental disability may be due on a nondisabling claim even if temporary disability is not due from the primary job. The nondisabling claim will not change to disabling status due to payment of supple-

mental disability. When supplemental disability payments cease on a nondisabling claim, the insurer or the assigned processing administrator must send the worker written notice advising the worker that their supplemental disability payments have stopped and of the worker's right to appeal that action to the Workers' Compensation Board within 60 days of the notice, if the worker disagrees.

(15) If the insurer has elected to process and pay supplemental disability pursuant to ORS 656.210(5)(a), the insurer must determine the worker's on-going entitlement to supplemental disability and must pay the worker supplemental disability simultaneously with any temporary disability due. Reimbursement for supplemental disability paid will be made pursuant to OAR 436-060-0500.

(16) If the insurer has elected not to process and pay supplemental disability, the assigned processing administrator must determine the worker's on-going entitlement to supplemental disability and must pay the worker supplemental disability due once each 14 days.

(17) A worker who is eligible for supplemental disability under section (5) of this rule has an on-going responsibility to provide information and documentation to the insurer or the assigned processing administrator, even if temporary disability is not due from the primary job.

(18) If the insurer has elected not to process and pay supplemental disability, the insurer must cooperate and communicate with the assigned processing administrator and both must retain documentation of shared information, as necessary, to coordinate benefits due.

(19) Supplemental disability applies to occupational disease claims the same as injury claims. Supplemental disability benefits for an occupational disease shall be based on the worker's combined primary and secondary wages at the time there is medical verification the worker is unable to work because of the disability.

(20) When an insurer elects to pay supplemental disability pursuant to ORS 656.210(5)(a) and OAR 436-060-0010(20) and receive reimbursement pursuant to OAR 436-060-0500, the insurer must maintain a record of supplemental disability paid to the worker, separate from temporary disability paid as a result of the job at injury.

(21) If a worker disagrees with the insurer's or the assigned processing administrator's decision about the worker's eligibility for supplemental disability or the rate of supplemental disability, the worker may request a hearing before the Hearings Division of the Workers' Compensation Board. If the worker chooses to request a hearing on the insurer's decision concerning the worker's eligibility for supplemental disability, the worker must submit an appeal of the insurer's or the assigned processing administrator's decision within 60 days of the notice in section (4) of this rule. Disputes that arise about the rate of supplemental disability may be resolved pursuant to OAR 436-060-0025(5) and may be submitted at any time. However, the insurer for the primary job is not required to contact the secondary job employer. The worker is responsible to provide any necessary documentation. By requesting resolution of the dispute under OAR 436-060-0025(5), the worker authorizes the Workers' Compensation Division to contact the secondary job employer to verify information provided by the worker to resolve the dispute.

(22) An insurer who elects not to process and pay supplemental disability benefits may be sanctioned upon a worker's complaint if the insurer delays sending necessary information to the assigned processing administrator and that delay causes a delay in the worker receiving supplemental disability benefits.

(23) In the event of a third party recovery, previously reimbursed supplemental disability benefits are a portion of the paying agency's lien.

(24) Remittance on recovered benefits shall be made to the department in the quarter following the recovery in amounts determined in accordance with ORS 656.591 and 656.593.

Stat. Auth.: ORS 656.210, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.210, 656.325(5), 656.704, 656.726(4) & sec. 3(2)(a), ch. 865, OL 2001

Hist.: WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 6-2002(Temp), f. 4-22-02, cert. ef. 5-10-02 thru 11-5-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2003(Temp), f. 8-29-03, cert. ef. 9-2-03 thru 2-28-04; WCD 11-2003(Temp), f. & cert. ef. 9-22-03 thru 2-28-03; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0040

Payment of Permanent Partial Disability Compensation

(1) Permanent partial disability exceeding \$6,000 may be paid monthly by the insurer. If it is paid monthly, it must be paid at 4.35 times the weekly temporary disability rate at the time of closure.

(2) If a claim is reopened as a result of a new medical condition or an aggravation of the worker's accepted condition(s) and temporary disability

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is due, any permanent partial disability benefits due must continue to be paid concurrently with temporary disability benefits.

(3) If the worker begins a training program after claim closure, the insurer must suspend the payment of any work disability award, but continue to pay any impairment award.

(4) The insurer must stop temporary disability compensation payments and resume any award payments suspended pursuant to ORS 656.268(9) upon the worker's completion or ending of the training, unless the worker is not then medically stationary. If no award payment remains due, temporary disability compensation payments must continue pending a subsequent claim closure.

Stat. Auth.: ORS 656.268(9), 656.704 & 656.726(4)
Stats. Implemented: ORS 656.268(9), 656.704 & 656.726(4)
Hist.: WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0232, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0045

Payment of Compensation During Worker Incarceration

(1) A worker is not eligible to receive temporary disability compensation for periods of time during which the worker is incarcerated for commission of a crime. All other compensation benefits must be provided the worker as if the worker were not incarcerated, except as provided in OAR 436-120. For the purpose of this rule:

(a) A worker is incarcerated for commission of a crime when:

(A) In pretrial detention, or

(B) Imprisoned following conviction for a crime.

(b) A worker is not incarcerated if the worker is on parole or work release status.

(2) Temporary disability compensation, if due and payable, must be paid the worker within 14 days of the date the insurer becomes aware the worker is no longer incarcerated.

(3) A worker who is incarcerated shall have the same right to claim closure under ORS 656.268 as a worker who is not incarcerated. Any permanent disability awarded must be paid the same as if the worker were not incarcerated.

Stat. Auth.: ORS 656.160, 656.704, & 656.726(4)
Stats. Implemented: ORS 656.160, 656.704, & 656.726(4)
Hist.: WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 19-1990(Temp), f. & cert. ef. 9-18-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0055

Payment of Medical Services on Nondisabling Claims; Employer/Insurer Responsibility

Pursuant to ORS 656.262(5) the costs of medical services for nondisabling claims, in amounts not to exceed \$500 per claim, must first be paid by the insurer and the insurer may be reimbursed by the employer if the employer so chooses. Such choice does not relieve the employers of their claim reporting requirements or the insurers of their responsibility to determine entitlement to benefits and process the claims accurately and timely. Also, when paid by the employer, such costs cannot in any way be used to affect the employer's experience rating modification or otherwise be charged against the employer. To enable the director to ensure these conditions are met, insurers and employers must comply with the following process and procedures:

(1) Notwithstanding the choice made by the employer pursuant to section (2) of this rule, the employer and insurer must process the nondisabling claims in accordance with all statutes and rules governing claims processing. The employer, however, may reimburse the medical service costs paid by the insurer if the employer has chosen to make such payments. The method and manner of reimbursement by the employer shall be as prescribed in section (3) of this rule. In no case, however, shall the employer have less than 30 days to reimburse the insurer.

(2) Prior to the commencement of each policy year, the insurer must send a notice to the insured or prospective insured, advising of the employer's right to reimburse medical service costs up to \$500 on accepted, nondisabling claims. The notice must advise the employer:

(a) Of the procedure for making such payments as outlined in section (3) of this rule;

(b) Of the general impact on the employer if the employer chooses to make such payments;

(c) That the employer is choosing not to participate if the employer does not respond in writing within 30 days of receipt of the insurer's notice;

(d) That the employer's written election to participate in the reimbursement program remains in effect, without further notice from the insurer, until the employer advises otherwise in writing or is no longer insured by the insurer; and

(e) That the employer may participate later in the policy period upon written request to the insurer, however, the earliest reimbursement period shall be the first completed period, established pursuant to subsection (3)(a) of this rule, following receipt of the employer's request.

(3) If the employer wishes to make such reimbursement, and so advises the insurer in writing, the procedure for reimbursement shall be:

(a) Within 30 days following each three month period after policy inception or a period mutually agreed upon by the employer and insurer, the insurer must provide the employer with a list of all accepted nondisabling claims for which payments were made during that period and the respective cost of each claim.

(b) The employer, no later than 30 days after receipt of the list, must identify those claims and the dollar amount the employer wishes to pay for that period and reimburse the insurer accordingly.

(c) Failure by the employer to reimburse the insurer within the 30 days allowed by subsection (3)(b) of this rule shall be deemed notice to the insurer that the employer does not wish to make a reimbursement for that period.

(d) Notwithstanding subsection (3)(b) of this rule, the employer and insurer may, by written agreement, establish a period in excess of thirty (30) days for the employer to reimburse the insurer.

(e) The insurer shall continue to bill the employer for any payments made on the claims within 27 months of the inception of the policy period. Any further billing and reimbursement will be made only by mutual agreement between the employer and the insurer.

(4) Insurers must maintain records of amounts reimbursed by employers for medical services on nondisabling claims. Insurers, however, shall not modify an employer's experience rating or otherwise make charges against the employer for any medical services reimbursed by the employer. For employers on retrospective rated plans, medical costs paid by the employer on nondisabling claims must be included in the retrospective premium calculation, but the amount paid by the employer shall be applied as credits against the resulting retrospective premium.

(5) If a claim changes from a nondisabling to a disabling claim and the insurer has recovered reimbursement from the employer for medical costs billed by the insurer prior to the change, the insurer shall exclude those amounts reimbursed from any experience rating, or other individual or group rating plans of the employer. If the employer is on a retrospective rated plan, premium calculation shall be as provided in section (4) of this rule.

(6) Insurers who do not comply with the requirements of this rule or in any way prohibit an employer from reimbursing the insurer pursuant to section (3) of this rule, shall be subject to a penalty as provided by OAR 436-060-0200(7).

(7) Self-insured employers must maintain records of all amounts paid for medical services on nondisabling claims in accordance with OAR 436-050-0220. When reporting loss data for experience rating, the self-insured may exclude costs for medical services paid on nondisabling claims in amounts not to exceed \$500 per claim.

Stat. Auth.: ORS 656.262(5), 656.704, 656.726(4) & 656.745
Stats. Implemented: ORS 656.262(5), 656.704 & 656.726(4)
Hist.: WCD 10-1987(Temp), f. 12-18-87, ef. 1-1-88; WCD 4-1988, f. 6-27-88, cert. ef. 7-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0060

Lump Sum Payment of Permanent Partial Disability Awards

(1) Pursuant to ORS 656.230, in all cases where an award for permanent partial disability does not exceed \$6,000, the insurer must pay all of the award to the worker in a lump sum. When the award for permanent partial disability exceeds \$6,000, the insurer or director may approve an application of the worker for lump sum payment when the order has become final by operation of law or the worker has waived their right to appeal the adequacy of the award. The lump sum application shall be in the form and format provided by the director.

(2) When an insurer receives a request for a lump sum application from the worker or the worker's representative, the insurer must send the lump sum application form to the requestor within ten business days.

(3) For the purpose of this rule, each opening of the claim is considered a separate claim and any subsequent permanent partial disability award from a claim reopening is a new and separate award. Additional award of permanent partial disability obtained through the appeal process

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is considered part of the total cumulative award for the open period of that claim.

(4) If the insurer agrees with the worker's request for lump sum payment of a permanent partial disability award in excess of \$6,000, they must make the lump sum payment within 14 days of receipt of the signed application.

(5) If the insurer disagrees with the worker's request for lump sum payment of a permanent partial disability award in excess of \$6,000, the insurer must submit the lump sum application with the reason for disagreement to the director within 14 days of receipt of the signed application. The insurer must simultaneously copy the worker and the worker's attorney, if represented, of the disagreement and submission to the division.

(6) For dates of injury prior to January 1, 2005, the insurer or the division may not approve an application for lump sum payment of unscheduled permanent disability when the worker:

(a) Has been found eligible for a vocational training program and will start the program within 30 days of the date of the decision on the lump sum request;

(b) Is actively enrolled and engaged in a vocational training program under OAR 436-120; or

(c) Has temporarily withdrawn from such a program.

(7) For dates of injury on or after January 1, 2005, the insurer or the division may not approve an application for lump sum payment of work disability when the worker:

(a) Has been found eligible for a vocational training program and will start the program within 30 days of the date of the decision on the lump sum request;

(b) Is actively enrolled and engaged in a vocational training program under OAR 436-120; or

(c) Has temporarily withdrawn from such a program.

(8) The insurer or the division shall not approve an application for lump sum payment of permanent disability when the worker is involved in litigation affecting the permanent partial disability award.

(9) When the division approves a disputed application, the insurer must pay the lump sum amount to the worker within 14 days after the mailing of the order.

(10) If any party disagrees with the decision of the division, the party may petition the director to reconsider the decision within 14 days after the mailing of the decision. Appeal of an order approving a lump sum payment stays payment of the lump sum until the director's review is complete and an order on the appeal is issued. The director's decision shall be final and not subject to review.

(11) A lump sum payment ordered in a litigation order or which is a part of a Claim Disposition Agreement pursuant to ORS 656.236 does not require further approval by the insurer or the division.

(12) When a partial payment is approved by the insurer or the division, it shall be in addition to the regularly scheduled monthly payment. The remaining balance shall be paid pursuant to ORS 656.216. Denial or partial approval of an application does not prevent another application by the worker for a lump sum payment of all or part of any remainder of the award, provided additional information is submitted.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.230, 656.704 & 656.726(4)

Hist.: WCB 6-1966, f. & ef. 6-24-66; WCB 5-1974, f. 2-13-74, ef. 3-11-74; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0250, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0095

Medical Examinations; Suspension of Compensation; and Insurer Medical Examination Notice

(1) The division will suspend compensation by order under conditions set forth in this rule. The worker must have the opportunity to dispute the suspension of compensation prior to issuance of the order. The worker is not entitled to compensation during or for the period of suspension when the worker refuses or fails to submit to, or otherwise obstructs, a medical examination reasonably requested by the insurer or the director pursuant to ORS 656.325(1). Compensation will be suspended until the examination has been completed. The conditions of the examination shall be consistent with conditions described in OAR 436-010-0265. Any action of a friend or family member which obstructs the examination shall be considered an obstruction of the examination by the worker for the purpose of this rule. The division may determine whether special circumstances exist that would

not warrant suspension of compensation for failure to attend or obstruction of the examination.

(2) The division will consider requests to authorize suspension of benefits on accepted claims, deferred claims and on denied claims in which the worker has appealed the insurer's denial.

(3) A worker must submit to medical examinations reasonably requested by the insurer or the director. No more than three separate medical examinations may be requested by the insurer for each open period of a claim, except as provided under OAR 436-010. Examinations after the worker's claim is closed are subject to limitations in ORS 656.268(7).

(4) The insurer may contract with a third party to schedule insurer requested medical examinations. If the third party notifies the worker of a scheduled examination on behalf of the insurer, the appointment notice is required to be sent on the insurer's stationery and must conform with the requirements of OAR 436-060-0095(5).

(5) If an examination is scheduled by the insurer or by another party at the request of the insurer, the worker and the worker's attorney shall be simultaneously notified in writing of the scheduled medical examination pursuant to ORS 656.331. The notice shall be sent at least 10 days prior to the examination. The notice sent for each appointment, including those which have been rescheduled, must contain the following:

(a) The name of the examiner or facility;

(b) A statement of the specific purpose for the examination and, identification of the medical specialties of the examiners;

(c) The date, time and place of the examination;

(d) The first and last name of the attending physician or authorized nurse practitioner and verification that the attending physician or authorized nurse practitioner was informed of the examination by, at least, a copy of the appointment notice, or a statement that there is no attending physician or authorized nurse practitioner, whichever is appropriate;

(e) If applicable, confirmation that the director has approved the examination;

(f) That the reasonable cost of public transportation or use of a private vehicle will be reimbursed and that, when necessary, reasonable cost of child care, meals, lodging and other related services will be reimbursed. A request for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request. Should an advance of these costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely appearance;

(g) That an amount will be paid equivalent to net lost wages for the period during which it is necessary to be absent from work to attend the medical examination if benefits are not received under ORS 656.210(4) during the absence; and

(h) The following notice in prominent or bold face type:

"You must attend this examination. If there is any reason you cannot attend, you must tell the insurer as soon as possible before the date of the examination. If you fail to attend or fail to cooperate, or do not have a good reason for not attending, your compensation benefits may be suspended in accordance with the workers' compensation law and rules, ORS 656.325 and OAR 436-060."

(6) Child care costs reimbursed at the rate prescribed by the State of Oregon Department of Human Services, comply with this rule.

(7) The request for suspension must be sent to the division. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service as for a summons. The request must include the following information:

(a) That the insurer requests suspension of benefits pursuant to ORS 656.325 and OAR 436-060-0095;

(b) The claim status and any accepted or newly claimed conditions;

(c) What specific actions of the worker prompted the request;

(d) The dates of any prior insurer medical examinations the worker has attended in the current open period of the claim and the names of the examining physicians or facilities, or a statement that there have been no prior examinations, whichever is appropriate;

(e) A copy of any approvals given by the director for more than three insurer medical examinations, or a statement that no approval was necessary, whichever is appropriate;

(f) Any reasons given by the worker for failing to comply, whether or not the insurer considers the reasons invalid, or a statement that the worker has not given any reasons, whichever is appropriate;

(g) The date and with whom failure to comply was verified. Any written verification of the worker's refusal to attend the exam received by the insurer from the worker or the worker's representative will be sufficient documentation with which to request suspension;

(h) A copy of the letter required in section (5) and a copy of any written verification received under subsection (7)(g);

(i) Any other information which supports the request; and

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(j) The following notice in prominent or bold face type:
"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the date of this request. If the division grants this request, you may lose all or part of your benefits. If your claim has not yet been accepted, your future benefits, if any, will be jeopardized."

(8) If the division consents to suspend compensation, the suspension shall be effective from the date the worker fails to attend an examination or such other date the division deems appropriate until the date the worker undergoes an examination scheduled by the insurer or director. Any delay in requesting consent for suspension may result in authorization being denied or the date of authorization being modified.

(9) The insurer must assist the worker in meeting requirements necessary for the resumption of compensation payments. When the worker has undergone the examination, the insurer must verify the worker's participation and reinstate compensation effective the date of the worker's compliance.

(10) If the worker makes no effort to reinstate compensation in an accepted claim within 60 days of the date of the consent to suspend order, the insurer must close the claim pursuant to OAR 436-030-0034(7).

(11) If the division denies the insurer's request for suspension of compensation, it shall promptly notify the insurer of the reason for denial. Failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(12) The division may also take the following actions in regard to the suspension of compensation:

(a) Modify or set aside the order of consent before or after filing of a request for hearing.

(b) Order payment of compensation previously suspended where the division finds the suspension to have been made in error.

(c) Reevaluate the necessity of continuing a suspension.

(13) An order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

Stat. Auth.: ORS 656.325, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.325, 656.704 & 656.726(4)

Hist.: WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; *WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; Renumbered from 436-060-0085(1),(2),(4); WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2000, f. 12-22-00, cert. ef. 1-1-01; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0105

Suspension of Compensation for Insanitary or Injurious Practices, Refusal of Treatment or Failure to Participate in Rehabilitation; Reduction of Benefits

(1) The division will suspend compensation by order under conditions set forth in this rule. The worker must have the opportunity to dispute the suspension of compensation prior to issuance of the order. The worker is not entitled to compensation during or for the period of suspension pursuant to ORS 656.325(2) when the worker commits insanitary or injurious acts which imperil or retard recovery; refuses to submit to medical or surgical treatment reasonably required to promote recovery; or fails or refuses to participate in a physical rehabilitation program.

(2) The insurer must demand in writing the worker either immediately cease actions which imperil or retard recovery or immediately begin to change the inappropriate behavior and participate in activities needed to help the worker recover from the injury. Such actions include insanitary or injurious practices, refusing essential medical or surgical treatment, or failing to participate in a physical rehabilitation program. Each time the insurer sends such a notice to the worker, the written demand must contain the following information, and a copy shall be sent simultaneously to the worker's attorney:

(a) A description of the unacceptable actions;

(b) Why such conduct is inappropriate, including the fact that the conduct is harmful and/or retards the worker's recovery, as appropriate;

(c) The date by which the inappropriate actions must stop, or the date by which compliance is expected, including what the worker must specifically do to comply; and

(d) The following notice of the consequences should the worker fail to correct the problem, in prominent or bold face type:

"If you continue to do insanitary or injurious acts beyond the date in this letter, or fail to consent to the medical or surgical treatment which is needed to help you recover from your injury, or fail to participate in physical rehabilitation needed to help you recover as much as possible from your injury, then we will request the suspension of your workers' compensation benefits. In addition, you may also have any permanent disability award reduced in accordance with ORS 656.325 and OAR 436-060."

(3) For the purposes of this rule, failure or refusal to accept medical treatment means the worker fails or refuses to remain under a physician's or authorized nurse practitioner's care or abide by a treatment regimen. A treatment regimen includes, but is not limited to a prescribed diet, exercise program, medication or other activity prescribed by the physician or authorized nurse practitioner which is designed to help the worker reach maximum recovery and become medically stationary.

(4) The insurer must verify whether the worker complied with the request for cooperation on the date specified in subsection (2)(c). If the worker initially agrees to comply, or complies and then refuses or fails to continue doing so, the insurer is not required to send further notice before requesting suspension of compensation.

(5) The request for suspension must be sent to the division. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service as for a summons. The request must include the following information:

(a) That the request for suspension is made in accordance with ORS 656.325 and OAR 436-060-0105;

(b) A description of the actions of the worker which prompted the request, including whether such actions continue;

(c) Any reasons offered by the worker to explain the behavior, or a statement that the worker has not provided any reasons, whichever is appropriate;

(d) How, when and with whom the worker's failure or refusal was verified;

(e) A copy of the letter required in section (2);

(f) Any other relevant information including, but not limited to; chart notes, surgical or physical therapy recommendations/prescriptions, and all physician or authorized nurse practitioner recommendations; and

(g) The following notice in prominent or bold face type:

"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the date of this request. If the division authorizes suspension of your compensation and you do not correct your unacceptable actions or show us a good reason why they should be considered acceptable, we will close your claim."

(6) Any delay in obtaining confirmation or in requesting consent for suspension of compensation may result in authorization being denied or the date of authorization being modified by the date of actual confirmation or the date the request is received by the division.

(7) If the division concurs with the request, it shall issue an order suspending compensation from a date established under section (5) until the worker complies with the insurer's request for cooperation. Where the worker is suspended for a pattern of noncooperation, the division may require the worker to demonstrate cooperation before restoring compensation.

(8) The insurer must monitor the claim to determine if and when the worker complies with the insurer's requests. When cooperation resumes, payment of compensation must resume effective the date cooperation was resumed.

(9) The insurer must make all reasonable efforts to assist the worker to restore benefits when the worker demonstrates the willingness to make such efforts.

(10) If the worker makes no effort to reinstate benefits within 60 days of the date of the consent order, the insurer must close the claim pursuant to OAR 436-030-0034.

(11) If the division denies the insurer's request for suspension of compensation, it shall promptly notify the insurer of the reason for denial. The insurer's failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(12) The division may also take the following actions in regard to the suspension of compensation:

(a) Modify or set aside the order of consent before or after filing of a request for hearing.

(b) Order payment of compensation previously suspended where the division finds the suspension to have been made in error.

(c) Reevaluate the necessity of continuing a suspension.

(13) An order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

(14) The director may reduce any benefits awarded the worker under ORS 656.268 when the worker has unreasonably failed to follow medical advice, or failed to participate in a physical rehabilitation or vocational assistance program prescribed for the worker under ORS chapter 656 and OAR chapter 436. Such benefits shall be reduced by the amount of the

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increased disability reasonably attributable to the worker's failure to cooperate. When an insurer submits a request to reduce benefits under this section, the insurer must:

- (a) Specify the basis for the request;
- (b) Include all supporting documentation;
- (c) Send a copy of the request, including the supporting documentation, to the worker and the worker's representative, if any, by certified mail; and

(d) Include the following notice in prominent or bold face type:
"Notice to worker: If you think this request to reduce your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the date of this request. If the division grants this request, you may lose all or part of your benefits."

(15) The division shall promptly make a decision on a request to reduce benefits and notify the parties of the decision. The insurer's failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the request to reduce benefits.

Stat. Auth.: ORS 656.325, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.325, 656.704 & 656.726(4)
Hist.: WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; Renumbered from 436-060-0085(1),(2),(4),(5); WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2000, f. 12-22-00, cert. ef. 1-1-01; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0135

Injured Worker, Worker Representative Responsible to Assist in Investigation; Suspension of Compensation and Notice to Worker

(1) When the worker refuses or fails to cooperate in an investigation of an initial claim for compensation, a claim for a new medical condition, a claim for an omitted medical condition, or an aggravation claim as required by ORS 656.262(13), the division will suspend compensation pursuant to ORS 656.262(14) by order under conditions set forth in this rule. The division may determine whether special circumstances exist that would not warrant suspension of compensation for failure to cooperate with an investigation. The worker must have the opportunity to submit information disputing the insurer's request for suspension of compensation prior to issuance of the order.

(2) A worker must submit to and fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques reasonably requested by the insurer. For the purposes of this rule, "personal and telephonic interviews" may be audio or video taped by one or more of the parties if prior written notice is given of the intent to record or tape an interview.

(3) The division will consider requests for suspension of benefits pursuant to ORS 656.262(14) only after the insurer has notified the injured worker in writing of the worker's obligation to cooperate as required by section (4) or (5) of this rule and only in claims where there has been no acceptance or denial issued.

(4) For suspension of benefits to be granted under this rule, the insurer must notify the worker in writing that an interview or deposition has been scheduled, or of other investigation requirements, and must give the worker at least 14 days to cooperate. The notice must be sent to the worker and copied to the worker's attorney, if represented, and must advise the worker of the date, time and place of the interview and/or any other reasonable investigation requirements. If the insurer contracts with a third party, such as an investigation firm, to investigate the claim, the notice shall be on the insurer's stationery and must conform with the requirements of this section. The notice must inform the worker that the interview, deposition, and/or any other investigation requirements are related to the worker's compensation claim. The notice must also contain the following statement in prominent or bold face type:

"The workers' compensation law requires injured workers to cooperate and assist the insurer or self-insured employer in the investigation of claims for compensation. Injured workers are required to submit to and fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques. If you fail to reasonably cooperate with the investigation of this claim, payment of your compensation benefits may be suspended and your claim may be denied in accordance with ORS 656.262 and OAR 436-060."

(5) Notwithstanding section (4) of this rule, for suspension of benefits to be granted under ORS 656.262(14) for noncooperation during an investigation of a claim resulting from a worker's failure to attend or cooperate in an insurer medical examination, the notification requirements in OAR 436-060-0095(5) must be met; however, the notice required by 436-060-0095(5)(h) must be replaced with the following notice, in prominent or bold face type:

"The workers' compensation law requires injured workers to cooperate and assist the insurer or self-insured employer in the investigation of claims for compensation. Therefore, you must attend this examination. If there is any reason

you cannot attend, you must tell the insurer as soon as possible before the date of the examination. If you fail to attend or fail to cooperate, and do not have a good reason for not attending, payment of your compensation benefits may be suspended and your claim may be denied in accordance with ORS 656.262 and OAR 436-060."

(6) The request for suspension must be sent to the division after the 14 days in section (4) have expired. If the request is for failure to attend an insurer medical examination pursuant to section (5), the request must be sent to the division after the date of the examination, or after the insurer receives written documentation from the worker or the worker's representative that the worker will not attend the examination. Any delay in requesting suspension may result in authorization being denied. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service. The request must include the following information sufficient to show the worker's failure to cooperate:

(a) That the insurer requests suspension of benefits pursuant to ORS 656.262(14) and this rule;

(b) Documentation of the specific actions of the worker or worker's representative that prompted the request;

(c) Any reasons given by the worker for failure to comply, or a statement that the worker has not given any reasons, whichever is appropriate. Any written verification the insurer receives from the worker or the worker's representative of the worker's refusal to cooperate or attend an exam will be sufficient documentation with which to request suspension;

(d) The dates of any prior insurer medical examinations the worker has attended in the current open period of the claim and the names of the examining physicians or facilities, or a statement that there have been no prior examinations, whichever is appropriate (if the suspension request is for not attending an insurer medical examination);

(e) A copy of any approvals given by the director for more than three insurer medical examinations, or a statement that no approval was necessary, whichever is appropriate (if the suspension request is for not attending an insurer medical examination);

(f) A copy of the notice required in section (4) or (5) of this rule; a copy of any written verification received under subsection (6)(c); and

(g) All other pertinent information, including, but not limited to, a copy of the claim for a new or omitted condition when that is what the insurer is investigating.

(7) After receiving the insurer's request as required in section (6) of this rule, the division will promptly notify all parties that the worker's benefits will be suspended in five working days unless the worker or the worker's attorney contacts the division by telephone or mails a letter documenting that the failure to cooperate was reasonable or unless the insurer notifies the division that the worker is now cooperating. The notice of the division will also advise that the insurer's obligation to accept or deny the claim within 60 days is suspended unless the insurer's request is filed with the division after the 60 days to accept or deny the claim has expired.

(8) If the worker cooperates after the insurer has requested suspension, the insurer must notify the division immediately to withdraw the suspension request. The division will notify all the parties. An order may be issued identifying the dates during which the insurer's obligation to accept or deny the claim was suspended.

(9) If the worker documents the failure to cooperate was reasonable the division will not suspend payment of compensation. However, an order may be issued identifying the dates during which the insurer's obligation to accept or deny the claim was suspended.

(10) If the worker has not documented that the failure to cooperate was reasonable, the division will issue an order suspending all or part of the payment of compensation to the worker. The suspension will be effective the fifth working day after notice is provided by the division as required by section (7) of this rule. The suspension of compensation shall remain in effect until the worker cooperates with the investigation. If the worker makes no effort to reinstate compensation within 30 days of the date of the notice, the insurer may deny the claim under ORS 656.262(14) and OAR 436-060-0140(10).

(11) Under ORS 656.262(13), an insurer who believes that a worker's attorney's unwillingness or unavailability to participate in an interview is unreasonable may notify the director in writing and the division will consider assessment of a civil penalty against the attorney of not more than \$1,000. The worker's attorney must have the opportunity to dispute the allegation prior to the issuance of a penalty. Notice under this section must be sent to the division. A copy of the notice must be sent simultaneously to the worker and the worker's attorney. Notice to the division by the insurer must contain the following information:

(a) What specific actions of the attorney prompted the request;

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(b) Any reasons given by the attorney for failing to participate in the interview; and

(c) A copy of the request for interview sent to the attorney.

(12) Failure to comply with the requirements of this rule will be grounds for denial of the insurer's request.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.262(14)(15), 656.704, 656.726(4) & sec. 7(6)(a), ch. 865, OL 2001

Hist.: WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 17-1996(Temp), f. 8-5-96, cert. ef. 8-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 6-2002(Temp), f. 4-22-02, cert. ef. 5-10-02 thru 11-5-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0140

Acceptance or Denial of a Claim

(1) The insurer is required to conduct a "reasonable" investigation based on all available information in ascertaining whether to deny a claim. A reasonable investigation is whatever steps a reasonably prudent person with knowledge of the legal standards for determining compensability would take in a good faith effort to ascertain the facts underlying a claim, giving due consideration to the cost of the investigation and the likely value of the claim.

(2) In determining whether an investigation is reasonable, the director will only look at information contained in the insurer's claim record at the time of denial. The insurer may not rely on any fact not documented in the claim record at the time of denial to establish that an investigation was reasonable.

(3) The insurer must give the claimant written notice of acceptance or denial of a claim within:

(a) 90 days after the employer's notice or knowledge of an initial claim or the insurer's receipt of written notice of an aggravation claim or written notice of a new medical condition claim for claims with a date of injury prior to January 1, 2002; or

(b) 60 days after the employer's notice or knowledge of an initial claim or the insurer's receipt of written notice of an aggravation claim or written notice of a new medical or omitted condition claim for claims with a date of injury on or after January 1, 2002.

(4) The director may assess a penalty against any insurer delinquent in accepting or denying a claim beyond the days required in (3) in excess of 5 percent of their total volume of reported disabling claims during any quarter.

(5) A notice of acceptance must comply with ORS 656.262(6)(b) and the rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law, OAR chapter 438. It must include a current mailing date, be addressed to the worker, be copied to the worker's representative, if any, and the worker's attending physician, and specify to the worker:

(a) What conditions are compensable;

(b) Whether the claim is disabling or non disabling;

(c) Of the Expedited Claim Service, of hearing and aggravation rights concerning non disabling injuries including the right to object to a decision that the injury is non disabling by requesting the insurer review the status;

(d) Of the employment reinstatement rights and responsibilities under ORS Chapter 659A;

(e) Of assistance available to employers from the Reemployment Assistance Program under ORS 656.622;

(f) That expenses personally paid for claim related expenses up to a maximum established rate must be reimbursed by the insurer when requested in writing and accompanied by sales slips, receipts, or other reasonable written support, for meals, lodging, transportation, prescriptions and other related expenses;

(g) That if the worker believes a condition has been incorrectly omitted from the notice of acceptance, or the notice is otherwise deficient, the worker must first communicate the objection to the insurer in writing specifying either that the worker believes the condition has been incorrectly omitted or why the worker feels the notice is otherwise deficient; and

(h) That if the worker wants the insurer to accept a claim for a new medical condition, the worker must put the request in writing, clearly identify the condition as a new medical condition, and request formal written acceptance of the condition.

(6) On fatal claims, the notice must be addressed "to the estate of" the worker and the requirements in (5)(a) through (h) shall not be included.

(7) The first acceptance issued on the claim must contain the title "Initial Notice of Acceptance" near the top of the notice. Any notice of acceptance must contain all accepted conditions at the time of the notice. When an insurer closes a claim, it must issue an "Updated Notice of Acceptance at Closure" under OAR 436-030-0015. Additionally, when

reopening a claim, the notice of acceptance must specify the condition(s) for which the claim is being reopened. Under ORS 656.262(6)(b)(F) the insurer must modify acceptance from time to time as medical or other information changes. An insurer must issue a "Modified Notice of Acceptance" (MNOA) when they:

(a) Accept a new or omitted condition: on a non disabling claim, while a disabling claim is open or after claim closure;

(b) Accept an aggravation claim;

(c) Change the disabling status of the claim; or

(d) Amend a notice of acceptance, including correcting a clerical error.

(8) Notwithstanding OAR 436-060-0140(7)(d), to correct an omission or error in an "Updated Notice of Acceptance at Closure"(UNOA), pursuant to OAR 436-030-0015(1)(e), the insurer must add the word "Corrected" to the UNOA.

(9) When an insurer accepts a new or omitted condition on a closed claim, the insurer must reopen the claim and process it to closure under ORS 656.262 and 656.267.

(10) A notice of denial must comply with the rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law, OAR chapter 438, and must:

(a) Specify the factual and legal reasons for the denial, including the worker's right to request a Worker Requested Medical Examination and a specific statement indicating if the denial was based in whole or part on an insurer medical examination, pursuant to ORS 656.325, and one of the following statements, as appropriate:

(A) "Your attending physician agreed with the insurer medical examination report"; or

(B) "Your attending physician did not agree with the insurer medical examination report"; or

(C) "Your attending physician has not commented on the insurer medical examination report"; and

(b) Inform the worker of the Expedited Claim Service and of the worker's right to a hearing under ORS 656.283.

(c) If the denial is pursuant to ORS 656.262(14), it must inform the worker that a hearing may occur sooner if the worker requests an expedited hearing pursuant to ORS 656.291.

(d) If paragraph (10)(a)(B) above applies, the denial notice must also include the division's Web site address and toll free Infoline number for the worker's use in obtaining a brochure about the Worker Requested Medical Examination.

(11) The insurer must send notice of the denial to each provider of medical services and health insurance when compensability of any portion of a claim for medical services is denied at the same time the denial is sent to the worker. If the insurer receives any billings from medical providers after claim denial, they must send a copy of the denial to the medical provider and advise the medical provider of the status of the denial. When compensability of the claim has been finally determined or when disposition of the claim has been made, the insurer must notify each affected service provider of the results of the compensability determination or disposition. The notification must include the results of the proceedings under ORS 656.236 or 656.289(4) and the amount of any settlement.

(12) The insurer must pay compensation due pursuant to ORS 656.262 and 656.273 until the claim is denied, except where there is an issue concerning the timely filing of a notice of accident as provided in ORS 656.265(4). The employer may elect to pay compensation under this section in lieu of the insurer doing so. The insurer must report to the division payments of compensation made by the employer as if the insurer had made the payment.

(13) Compensation payable to a worker or the worker's beneficiaries while a claim is pending acceptance or denial does not include the costs of medical benefits or burial.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.262(6), 656.704, 656.726(4) & sec. 7(6)(a) & 1(1)(b), ch. 865, OL 2001

Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0305, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 12-1992, f. 6-12-92, cert. ef. 7-1-92; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 17-1996(Temp), f. 8-5-96, cert. ef. 8-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

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436-060-0147

Worker Requested Medical Examination (WRME)

(1) Pursuant to ORS 656.325(1)(b) the director shall establish and maintain a list of physicians in accordance with OAR 436-010-0330.

(2) The director shall determine the worker's eligibility for a Worker Requested Medical Examination (Exam). The worker is eligible for an exam if the worker has made a timely request for a Workers' Compensation Board hearing on a denial of compensability as required by ORS 656.319(1)(a); and the denial was based on one or more Insurer Medical Examination reports with which the attending physician disagreed.

(3) The worker must submit a request for the exam to the director. A copy of the request must be sent simultaneously to the insurer or self-insured employer. The request must include:

(a) The name, address, and claim identifying information of the injured worker;

(b) A list of physicians, including name(s) and address(es), who have previously provided medical services to the worker on this claim or who have previously provided medical services to the worker related to the claimed condition(s);

(c) The date the worker requested a hearing and a copy of the hearing request;

(d) A copy of the insurer's denial letter; and

(e) Document(s) that demonstrate that the attending physician did not concur with the Insurer Medical Examination report(s).

(4) The insurer must, upon written notice from the worker, mail to the director no later than the 14th day following the insurer's receipt of the worker's request, the names and addresses of all physicians who have:

(a) Acted as attending physician;

(b) Provided medical consultations and/or treatment to the worker;

(c) Examined the worker at an insurer medical examination; or

(d) Reviewed the worker's medical records on this claim. For the purpose of this rule, "Attending Physician" and "Insurer Medical Examination" have the meanings defined in OAR 436-010-0005 and 436-010-0265(1), respectively.

(5) Failure to provide the required documentation described in section (4) in a timely manner will subject the insurer to civil penalties under OAR 436-060-0200.

(6) The director will notify all parties in writing of the physician selected, or will provide the worker or the worker's representative a list of appropriate physicians.

(7) If the director provides a list of physicians, the following applies:

(a) The worker's or the worker's representative's response must be in writing, signed, and received by the director within ten business days of providing the list.

(b) The worker or the worker's representative may eliminate the name of one physician from the list.

(c) If the worker or the worker's representative does not respond as provided in this section, the director will select a physician.

(d) The director will notify the parties in writing of the physician selected.

(8) The worker and/or the worker's legal representative shall schedule the exam with the selected physician and notify the insurer and the Workers' Compensation Board of the scheduled exam date within 14 days of the notification date in (6) of this rule. An unrepresented worker may consult with the Injured Worker Ombudsman for assistance.

(9) The insurer must send the physician the worker's complete medical record on this claim and the original questions asked of the Insurer Medical Examination(s) physician(s) no later than 14 days prior to the date of the scheduled exam.

(10) The worker or the worker's representative shall communicate questions related to the compensability denial in writing to be answered by the physician at the exam to the physician at least 14 days prior to the scheduled date of the exam. An unrepresented worker may consult with the Injured Worker Ombudsman for assistance.

(11) Upon completion of the exam the physician must address the original Insurer Medical Examination(s) questions and the questions from the worker or the worker's representative pursuant to section (9) and send the report to the worker's legal representative, if any, or the worker, and the insurer within 5 working days.

(12) The insurer must pay the physician selected pursuant to this rule in accordance with OAR 436-009. Delivery of medical services to injured workers shall be in accordance with OAR 436-010.

(13) If the worker fails to attend the scheduled Worker Requested Medical Exam, the insurer must pay the physician for the missed examination. The insurer is not required to pay for another examination unless the

worker did not attend the missed examination for reasons beyond the worker's reasonable control.

(14) The insurer must reimburse the worker for all necessary related services pursuant to ORS 656.325(1).

Stat. Auth.: ORS 656.704, 656.726(4) & sec. 13(1)(b), ch. 865, OL 2001

Stats. Implemented: ORS 656.325(1), 656.704 & 656.726(4)

Hist.: WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0150

Timely Payment of Compensation

(1) Benefits are deemed paid when addressed to the last known address of the worker or beneficiary and deposited in the U.S. Mail or deposited in the worker's or beneficiary's account by approved electronic equivalent. Payments falling due on a weekend or legal holiday pursuant to ORS 187.010 and 187.020 may be paid on the last working day prior to or the first working day following the weekend or legal holiday. Subsequent payments may revert back to the payment schedule prior to the weekend or legal holiday.

(2) For the purpose of this rule, legal holidays in the State of Oregon are:

(a) Each Sunday;

(b) New Year's Day on January 1;

(c) Martin Luther King, Jr.'s Birthday on the third Monday in January;

(d) Presidents Day, for the purpose of commemorating Presidents Washington and Lincoln, on the third Monday in February;

(e) Memorial Day on the last Monday in May;

(f) Independence Day on July 4;

(g) Labor Day on the first Monday in September;

(h) Veterans Day on November 11;

(i) Thanksgiving Day on the fourth Thursday in November; and

(j) Christmas Day on December 25.

(k) Each time a holiday, other than Sunday, falls on Sunday, the succeeding Monday shall be a legal holiday. Each time a holiday falls on Saturday, the preceding Friday shall be a legal holiday.

(l) Additional legal holidays shall include every day appointed by the Governor as a legal holiday and every day appointed by the President of the United States as a day of mourning, rejoicing or other special observance only when the Governor also appoints that day as a holiday.

(3) First payment of time loss must be timely. An insurer's performance is in compliance when 80% of payments are timely. The director may assess a penalty against an insurer falling below these norms during any quarter.

(4) Compensation withheld pursuant to ORS 656.268(12) and (13), and 656.596(2), shall not be deemed untimely provided the insurer notifies the worker in writing why benefits are being withheld and the amount that must be offset before any further benefits are payable.

(5) Timely payment of temporary disability benefits means payment has been made no later than the 14th day after:

(a) The date of the employer's notice or knowledge of the claim, provided the attending physician or authorized nurse practitioner has authorized temporary disability. Temporary disability accrued prior to the date of the employer's notice or knowledge of the claim shall be due within 14 days of claim acceptance;

(b) The date the attending physician or authorized nurse practitioner authorizes temporary disability, if the authorization is more than 14 days after the date of the employer's notice or knowledge of the claim;

(c) The start of authorized vocational training pursuant to ORS 656.268(9), if the claim has previously been closed;

(d) The date the insurer has notice or knowledge of a medically verified inability to work due to an aggravation of the worker's condition under ORS 656.273. For the purpose of this subsection, compensation for authorized temporary disability is due and payable on a claim for aggravation, unless the claim is denied;

(e) The date of any division order, including, but not limited to, a reconsideration order, which orders payment of temporary disability. If a reconsideration order has been appealed by the insurer, the appeal stays payment of temporary disability benefits except those which accrue from the date of the order, pursuant to ORS 656.313;

(f) The date of a notice of claim closure issued by the insurer which finds the worker entitled to temporary disability;

(g) The date a notice of closure is set aside by a reconsideration order;

(h) The date any litigation authorizing retroactive temporary disability becomes final. Temporary disability accruing from the date of the order must begin no later than the 14th day after the date the order is filed. For the purpose of this rule, the "date the order is filed" for litigation from the

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Workers' Compensation Board, is the signature date and from the courts, it is the date of the appellate judgment;

(i) The date the division refers a claim to the insurer for processing pursuant to ORS 656.029;

(j) The date the division refers a noncomplying employer claim to an assigned claims agent pursuant to ORS 656.054; or

(k) The date a claim disposition is disapproved by the Board, if temporary disability benefits are otherwise due;

(l) The date the division designates a paying agent pursuant to ORS 656.307;

(m) The date a claim is reclassified from nondisabling to disabling, if temporary disability is due and payable; and

(n) The date an insurer voluntarily rescinds a denial of a disabling claim.

(6) Temporary disability must be paid to within seven days of the date of payment at least once each 14 days. When making payments as provided in OAR 436-060-0020(1), the employer may make subsequent payments of temporary disability concurrently with the payroll schedule of the employer, rather than at 14-day intervals.

(7) Permanent disability and fatal benefits must be paid no later than the 30th day after:

(a) The date of a notice of claim closure issued by the insurer;

(b) The date of any litigation order which orders payment of permanent total disability or fatal benefits. Permanent total or fatal benefits accruing from the date of the order must begin no later than the 30th day after the date the order is filed. For the purpose of this rule, the "date the order is filed" for litigation from the Workers' Compensation Board, is the signature date and from the courts it is the date of the appellate judgment;

(c) The date of any division order, including, but not limited to, a reconsideration order, which orders payment of compensation for permanent disability;

(d) The date any litigation authorizing permanent partial disability becomes final; or

(e) The date a claim disposition is disapproved by the Board, if permanent disability benefits are otherwise due.

(f) The date authorized training ends if the worker is medically stationary and any previous award remains unpaid, pursuant to ORS 656.268(9) and OAR 436-060-0040(2).

(8) Subsequent payments of permanent disability and fatal benefits are made in monthly sequence. The insurer may adjust monthly payment dates, but must inform the beneficiary prior to making the adjustment. No payment period shall exceed one month without the division approval.

(9) The insurer must notify the worker or beneficiary in writing when compensation is paid of the specific purpose of the payment, the time period for which the payment is made, and the reimbursable expenses. The insurer must maintain records of compensation paid for each claim where benefits are due and payable. If the worker submits a request for reimbursement of multiple items and full reimbursement is not made, the insurer must provide specific reasons for non-payment or reduction of each item.

(10) Payment of a Claim Disposition Agreement must be made no later than the 14th day after the Board mails notice of its approval of the agreement to the parties, unless otherwise stated in the agreement.

(11) Pursuant to ORS 656.126(6), when Oregon compensation is more than the compensation under another law for the same injury or occupational disease, or compensation paid the worker under another law is recovered from the worker for the same injury or occupational disease, the insurer must pay any unpaid compensation to the worker up to the amount required by the claim under Oregon law within 14 days of receipt of written documentation supporting the underpayment of Oregon compensation.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.262(4), 656.268(9), 656.273, 656.278, 656.289, 656.307, 656.313, 656.704 & 656.726(4)

Hist.: WCB 9-1966, f. & ef. 11-14-66; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0310, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0155

Penalty to Worker for Untimely Processing

(1) Pursuant to ORS 656.262(11), the director may require the insurer to pay an additional amount to the worker as a penalty when the insurer unreasonably delays or unreasonably refuses to pay compensation, or unreasonably delays acceptance or denial of a claim.

(2) Requests for penalties under this section must be in writing, stating what benefits have been delayed or remain unpaid, and mailed or delivered to the division within 180 days of the alleged violation.

(3) For the purpose of this section, "violation" is either:

(a) A late payment or the nonpayment of any single payment due, in which case a request for penalty must be mailed or delivered to the director within 180 days of the date payment was due; or

(b) A continuous nonpayment or underpayment such as with yearly cost of living increases for temporary disability compensation. In these instances, a request for penalty must be mailed or delivered to the director within 180 days of the date of the last underpayment. All prior underpayments will be considered as one violation, regardless of when the first underpayment occurred.

(4) When notified by the director that additional amounts may be due the worker as a penalty under this rule, the insurer must respond in writing to the division. The response must be mailed or delivered to the division within 21 days of the date of the division's inquiry letter, with copies of the response, including any attachments, sent simultaneously to the worker and the worker's attorney (if represented). If an insurer fails to respond or provides an inadequate response (e.g. failing to answer specific questions or provide requested documents), assessment of a civil penalty may occur pursuant to OAR 436-060-0200. In addition, failure to provide copies of the response to the worker and/or attorney timely may result in the assessment of a \$50.00 civil penalty pursuant to OAR 436-060-0200.

(5) When no written reason for delay is provided by the insurer as required in section (4) and no reason for the delay is evident from the worker's or division's records, the delay shall be considered unreasonable, unless the worker has provided insufficient information to assess a penalty. In such cases, a civil penalty may be assessed pursuant to OAR 436-060-0200.

(6) The director will only consider a penalty issue where the assessment and payment of additional amounts described in ORS 656.262(11) is the sole issue of any proceeding between the parties. If a proceeding on any other issue is initiated before the Hearings Division of the Workers' Compensation Board between the same parties prior to the director issuing an order under this section, and the director is made aware of the proceeding, jurisdiction over the penalty proceeding before the director shall immediately rest with the Hearings Division and result in referral of the proceedings to the Hearings Division. If the director has not been made aware of the proceeding before the Hearings Division and issues a penalty order which becomes final, the penalty of the director will stand.

(7) The director will use the matrix attached to these rules in Appendix "B" in assessing penalties. When there are no "amounts then due" upon which to assess a penalty, no penalty will be issued under this rule.

(8) Penalties ordered under this rule must be paid to the worker no later than the 30th day after the date of the order, unless the order is appealed. If the order is appealed and later upheld, the penalty will be due within 14 days of the date the order upholding the penalty becomes final. Failure to pay penalties in a timely manner will subject the insurer to civil penalties under OAR 436-060-0200.

(9) Disputes regarding unreasonable delay or unreasonable refusal to pay compensation, or unreasonable delay in acceptance or denial of a claim may be resolved by the parties. In cases where the parties wish to resolve such disputes and the assessment and payment of additional amounts described in ORS 656.262(11) is the sole issue of a proceeding between the parties, and the violation(s) occurred within the last 180 days in accordance with section (3), then a stipulation must be submitted to the division for approval. The stipulation must specify:

(a) The benefits delayed and the amounts;

(b) The time period(s) involved;

(c) If applicable, the name of the medical provider(s) and the date(s) of service(s) relating to medical bills; and

(d) The amount of the penalty not to exceed 25 percent of the amount of compensation delayed.

(10) Payment of the penalty is due within 14 days after the date the division approves the stipulation, unless otherwise stated in the stipulation. Failure to pay penalties in a timely manner will subject the insurer to civil penalties under OAR 436-060-0200.

(11) Any other agreements between the parties to pay a penalty without benefit of a stipulation approved by the division will not be acknowledged as a violation as it applies to the matrix attached to these rules.

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

Stat. Auth.: ORS 656.262(11), 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.262(11), 656.704 & 656.726(4)

Hist.: WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94

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94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0170

Recovery of Overpayment of Benefits

(1) Insurers may recover overpayment of benefits paid to a worker as specified by ORS 656.268(13), unless authority is granted by an Administrative Law Judge or the Workers' Compensation Board.

(2) Insurers may recover an overpayment from any benefits currently due on any claim the worker has with that insurer. Insurers must explain in writing the reason, amount and method of recovery to the worker and the worker's attorney or to the worker's survivors.

(3) When overpaid benefits are offset against monthly permanent partial disability award payments, the recovery shall be from the total amount of the award with the remainder of the award being paid out at 4.35 times the temporary total disability rate and no less than \$108.75, starting with the first month's payment.

Stat. Auth.:ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.268(13) & (15), 656.704 & 656.726(4)

Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; WCD 3-1984(Admin), f. & ef. 4-4-84; Renumbered from 436-054-0320, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0180

Designation and Responsibility of a Paying Agent

(1) For the purpose of this rule:

(a) "Compensable injury" means an accidental injury or damage to a prosthetic appliance, or an occupational disease arising out of and in the course of employment with any Oregon employer, and which requires medical services or results in disability or death.

(b) "Exposure" means a specific incident or period during which a compensable injury may have occurred.

(c) "Responsibility" means liability under the law for the acceptance and processing of a compensable claim.

(2) The division will designate by order which insurer must pay a claim if the employers and insurers admit that the claim is otherwise compensable, and where there is an issue regarding:

(a) Which subject employer is the true employer of a worker;

(b) Which of more than one insurer of a certain employer is responsible for payment of compensation to a worker;

(c) Which of two or more employers or their insurers is responsible for paying compensation for one or more on-the-job injuries and/or occupational diseases; or

(d) Which of two or more employers is responsible when there is joint employment.

(3) With the consent of the Workers' Compensation Board, Own Motion claims are subject to the provisions of this rule.

(4) Upon learning of any of the situations described in section (2), the insurer must expedite the processing of the claim by immediately investigating the claim to determine responsibility and whether the claim is otherwise compensable. For the purposes of this rule, insurers identified in a potential responsibility dispute pursuant to ORS 656.307 must, upon request, share claim related medical reports and other information without charge pertinent to the injury in order to expedite claim processing. The act of the worker applying for compensation benefits from any employer identified as a party to a responsibility dispute shall constitute authorization for the involved insurers to share the pertinent information in accordance with the criteria and restrictions provided in OAR 436-060-0017 and 436-010-0240. No insurer who shares information in accordance with this rule shall bear any legal liability for disclosure of such information.

(5) Upon learning of any of the situations described in section (2), the insurer must immediately notify any other affected insurers of the situation. Such notice must identify the compensable injury and include a copy of all medical reports and other information pertinent to the injury. The notice must identify each period of exposure which the insurer believes responsible for the compensable injury by the following:

(a) Name of employer;

(b) Name of insurer;

(c) Specific date of injury or period of exposure; and

(d) Claim number, if assigned.

(6) Upon deciding that the responsibility for an otherwise compensable injury cannot be determined, the insurer must request designation of a paying agent by writing to the division and sending a copy of the request to the worker and the worker's representative, if any. The request shall not be

contained in or attached to any form or report the insurer is required to submit pursuant to OAR 436-060-0010 or in the denial letter to the worker required by OAR 436-060-0140. Such a request, or agreement to designation of a paying agent, is not an admission that the injury is compensable related to that insurer's claim; it is solely an assertion that the injury is compensable against a subject Oregon employer. The insurer's written request to the division must contain the following information:

(a) Identification of the compensable injury(s);

(b) That the insurer is requesting designation of a paying agent pursuant to ORS 656.307;

(c) That the insurer acknowledges the injury is otherwise compensable;

(d) That responsibility is the only issue;

(e) Identification of the specific claims or exposures involved by:

(A) employer;

(B) Insurer;

(C) Date of injury or specific period of exposure; and

(D) Claim number, if assigned;

(f) Acknowledgment that medical reports and other material pertinent to the injury have been provided to the other parties; and

(g) Confirmation the worker has been advised of the actions being taken on the worker's claim.

(7) The division will not designate a paying agent where there remains an issue of whether the injury is compensable against a subject Oregon employer, or if the 60 day appeal period of a denial has expired without a request for hearing being received by the Board or the division receiving a request for a designation of paying agent order, or if an insurer included in the question of responsibility opposes designation of a paying agent because it has received no claim.

(8) When notified by the division that there is a reasonable doubt as to the status of the claim or intent of a denial, the insurer must provide written clarification to the division, the worker, insurers involved and other interested parties within 21 days of the date of the notification. If an insurer fails to respond timely or provides an inadequate response (e.g. failing to answer specific questions or provide requested documents), a civil penalty will be assessed pursuant to OAR 436-060-0200.

(9) Insurers receiving notice from the division of a worker's request for designation of a paying agent must immediately process the request in accordance with sections (4) through (6).

(10) Upon receipt of written acknowledgment from the insurers that the only issue is responsibility for an otherwise compensable injury claim, the division will issue an order designating a paying agent pursuant to ORS 656.307. The division will designate the insurer with the lowest compensation considering the following factors:

(a) The claim with the lowest temporary total disability rate.

(b) If the temporary total disability rates and the rates per degree of permanent disability are the same, the earliest claim.

(c) If there is no temporary disability or the temporary total disability rates are the same, but the rates per degree of permanent disability are different, the claim with the lowest rate per degree of permanent disability.

(d) If one or more claims have disposed of benefits in accordance with ORS 656.236(1), the claim providing the lowest compensation not released by the claim disposition agreement.

(e) If one claim is under "Own Motion" jurisdiction, the Own Motion claim even if not the claim with the lowest temporary total disability rate.

(f) If more than one claim is under "Own Motion" jurisdiction, the Own Motion claim with the lowest temporary total disability rate.

(11) By copy of its order, the division will refer the matter to the Workers' Compensation Board to set a proceeding pursuant to ORS 656.307 to determine which insurer is responsible for paying benefits to the worker.

(12) The designated paying agent must process the claim as an accepted claim through claim closure pursuant to OAR 436-030-0015(9) unless relieved of the responsibility by an order of the Administrative Law Judge or resolution through mediation or arbitration pursuant to ORS 656.307(6). The parties to an order under this section shall not settle any part of a claim pursuant to ORS 656.236 or 656.289, except to resolve the issue of responsibility, unless prior approval and agreement is obtained from all potential responsible insurers. Resolution of a dispute by mediation or arbitration by a private party cannot obligate the Consumer and Business Services Fund without the prior approval of the director. The Consumer and Business Services Fund shall not be obligated when one party declines to participate in a legitimate settlement conference under an ORS 656.307 order. Compensation paid under the order must include all benefits, including medical services, provided for a compensable injury to a subject worker or the

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worker's beneficiaries. The payment of temporary disability due must be for periods subsequent to periods of disability already paid by any insurer.

(13) After a paying agent is designated, if any of the insurers determine compensability is or will be an issue at hearing, they must notify the division. Any insurer must notify the division and all parties to the order of any change in claim acceptance status after the designation of a paying agent. When the division receives notification of a change in the acceptance of a claim or notification that compensability is an issue after designation of a paying agent, the division shall order termination of any further benefits due from the original order designating a paying agent.

Stat. Auth.: ORS 656.307, 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.307, 656.308, 656.704 & 656.726(4)

Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 5-1980(Admin)(Temp), f. & ef. 4-29-80; WCD 7-1980(Admin), f. 9-5-80, ef. 10-1-80; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0332, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0190

Monetary Adjustments Among Parties and Department of Consumer and Business Services

(1) An order of the director pursuant to ORS 656.307 and OAR 436-060-0180 applies only to the period prior to the order of the Administrative Law Judge determining the responsible paying party. Payment of compensation made thereafter shall not be recovered from the Consumer and Business Services Fund, unless the director concludes payment was made before the Administrative Law Judge's order was received by the paying agent designated under OAR 436-060-0180. Any monetary adjustment necessary after the Administrative Law Judge's order shall be handled under OAR 436-060-0195.

(2) When all litigation on the issue of responsibility is final, the insurer ultimately held to be responsible must, prior to paying any compensation, contact any nonresponsible insurer to learn what compensation has already been paid. When contacted by the responsible insurer, the nonresponsible insurer must provide the requested information necessary for the responsible insurer to make a timely payment to the worker, medical providers or others, but in any case no later than 20 days after the date of the notification. Failure to respond to the responsible insurer's inquiry in a timely manner may result in non-reimbursement otherwise due from the responsible insurer or from the Consumer and Business Services Fund.

(3) The responsible insurer must reimburse any nonresponsible insurers for compensation the nonresponsible insurer paid which the responsible insurer is responsible for, but has not already paid within 30 days of receiving sufficient information to adequately determine the benefits paid and the relationship to the condition(s) involved. Any balance remaining due the worker, medical providers or others must be paid in a timely manner under OAR 436-009 and 436-060-0150. Payment of compensation which results in duplicate payment to the worker, medical providers or others as a result of failing to contact the nonresponsible insurer shall not release the responsible insurer from the requirement to reimburse any nonresponsible insurers for its costs.

(4) The division shall direct any necessary monetary adjustment between the parties involved which is not otherwise ordered by the Administrative Law Judge or voluntarily resolved by the parties, but shall not order an insurer to pay compensation over and beyond that required by law, as it relates to the insurer's claim, except in the situation described in section (3). Failure to make monetary adjustments within 30 days of an order by the division will subject the insurer to civil penalties under OAR 436-060-0200. Only compensation paid as a result of an order by the director under OAR 436-060-0180 and consistent with this rule shall be recoverable from the Consumer and Business Services Fund when such compensation is not reimbursed to the nonresponsible insurer by the responsible insurer.

(5) When the division determines improper or untimely claim processing by the designated paying agent has resulted in unnecessary costs, the division may deny reimbursement from the responsible insurer and the Consumer and Business Services Fund.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.307(3), 656.704 & 656.726(4)

Hist.: WCB 5-1970, f. 6-3-70, ef. 6-25-70; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 5-1980(Admin)(Temp), f. & ef. 4-29-80; WCD 7-1980(Admin), f. 9-5-80, ef. 10-1-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0334, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-

30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0195

Miscellaneous Monetary Adjustments Among Insurers

(1) The director may order monetary adjustments between insurers under authority provided by ORS 656.726(4) and 656.202 where a claimant has a right to compensation, but there is a dispute between insurers that does not fall under the director's authority in ORS 656.307 and OAR 436-060-0190. Any failure to obtain reimbursement from an insurer under this rule shall not be recoverable from the Consumer and Business Services Fund. The purpose of this rule is to ensure the claimant properly receives all compensation due under the workers' compensation law, but is not unduly compensated for more than the law intended.

(2) When any litigation on issues in question is final, insurers must make any necessary monetary adjustments among themselves consistent with the determination of coverage for compensation paid to the worker, medical providers and others for which they are responsible and payment has not already been made within 30 days of receiving sufficient information to adequately determine the benefits paid and the relationship to the condition(s) involved. Any balance due after making such adjustments must be paid in a timely manner to the worker, medical providers and others under OAR 436-009 and 436-060-0150.

(3) The division may direct any necessary monetary adjustment between parties, but shall not order an insurer to pay compensation over and beyond that required by law, as it relates to the insurer's claim, except where an insurer unduly compensates a claimant while having knowledge such compensation has already been paid by another insurer. Notwithstanding, each insurer has its own independent obligation to process its claim and pay interim compensation due until the claim is either accepted or denied. When notified by the division that a dispute over monetary adjustment exists the insurer must provide a written response to questions or issues raised, including supporting documentation, to the division, insurers involved and other interested parties within 21 days of the date of the notification.

(4) Failure to respond to the division's inquiries or make monetary adjustments within 30 days of an order by the division will subject the insurer to civil penalties under OAR 436-060-0200.

(5) When the division determines improper or untimely claim processing by an insurer resulted in unnecessary costs, the division may deny monetary adjustment between the insurers.

Stat. Auth.: ORS 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.704 & 656.726(4)

Hist.: WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0200

Assessment of Civil Penalties

(1) The director through the division and pursuant to ORS 656.745 shall assess a civil penalty against an employer or insurer who intentionally or repeatedly induces claimants for compensation to fail to report accidental injuries, causes employees to collect accidental injury claims as off-the-job injury claims, persuades claimants to accept less than the compensation due or makes it necessary for claimants to resort to proceedings against the employer to secure compensation due.

(2) A penalty under section (1) will only be assessed after all litigation on the matter has become final by operation of the law. For the purpose of section (1):

(a) "Intentionally" means the employer or insurer acted with a conscious objective to cause any result described in ORS 656.745(1) or to engage in the conduct so described in that section; and

(b) "Repeatedly" means more than once in any twelve month period.

(3) Pursuant to ORS 656.745, the director may assess a civil penalty against an employer or insurer who fails to comply with rules and orders of the director regarding reports or other requirements necessary to carry out the purposes of the Workers' Compensation Law.

(4) An employer or insurer failing to meet the time frame requirements set forth in OAR 436-060-0010, 436-060-0017, 436-060-0018, 436-060-0030, 436-060-0060, 436-060-0147, 436-060-0155 and 436-060-0180 may be assessed a civil penalty up to \$1,000.

(5) An insurer who willfully violates OAR 436-060-0160 shall be assessed a civil penalty of \$1,000.

(6) An insurer that does not accurately report timeliness of first payment information to the division may be assessed a civil penalty of \$500 for reporting inaccurate information plus \$50 for each violation, or \$10,000 in the aggregate for all violations within any three month period. For the pur-

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poses of this section, a violation consists of each situation where a first payment was reported to have been made timely, but was found upon audit to have actually been late.

(7) Notwithstanding section (3) of this rule, an employer or insurer who does not comply with the claims processing requirements of ORS chapter 656, and rules and orders of the director relating thereto may be assessed a civil penalty of up to \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three month period.

(8) Any employer or insurer which misrepresents themselves in any manner to obtain workers' compensation claims records from the director, or which uses such records in a manner contrary to these rules, is subject to a civil penalty of \$1,000 for each occurrence. In addition, the director may suspend or revoke an employer's or insurer's access to workers' compensation claims records for such time as the director may determine. Any other person determined to have misrepresented themselves or who uses records in a manner contrary to these rules shall have access to these records suspended or revoked for such time as the director may determine.

(9) For the purpose of section (7), statutory claims processing requirements include but are not limited to, ORS 656.202, 656.210, 656.212, 656.228, 656.234, 656.236, 656.245, 656.262, 656.263, 656.264, 656.265, 656.268, 656.273, 656.307, 656.313, 656.325, 656.331, and 656.335.

(10) In arriving at the amount of penalty, the division may consider, but is not limited to:

(a) The ratio of the volume of violations to the volume of claims reported, or

(b) The ratio of the volume of violations to the average volume of violations for all insurers or self-insured employers, and

(c) Prior performance in meeting the requirements outlined in this section.

(11) Insurer performance data is reviewed every quarter based on reports submitted by the insurer during the previous calendar quarter. Civil penalties will be issued for each of the performance areas where the percentages fall below the acceptable standards of performance as set forth in these rules. The standard for reporting claims to the division will allow insurers to report claims by filing a Form 1502 accompanied by a Form 827 where the Form 801 is not available. Penalties will be issued in accordance with the matrix set forth in Appendix "C."

(12) Pursuant to ORS 656.262(13), an injured worker's attorney that is not willing or available to participate in an interview at a time reasonably chosen by the insurer within 14 days of the request for interview may be assessed a civil penalty not to exceed \$1,000 if the director finds the attorney's actions unreasonable.

[ED. NOTE: Appendices & Forms referenced are available from the agency.]
Stat. Auth.: ORS 656.704 & 656.726(4)
Stats. Implemented: ORS 656.202, 656.210, 656.212, 656.228, 656.234, 656.236, 656.245, 656.262, 656.263, 656.264, 656.265, 656.268, 656.273, 656.307, 656.313, 656.325, 656.331, 656.335, 656.704, 656.726(4) & 656.745
Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0981, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 3-1991, f. 4-18-91, cert. ef. 6-1-91; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

436-060-0500

Reimbursement of Supplemental Disability for Workers with Multiple Jobs at the Time of Injury

(1) When an insurer elects to pay supplemental disability due a worker with multiple jobs at the time of injury, reimbursement of the supplemental amount shall be made by the director quarterly, after receipt and approval of documentation of compensation paid by the insurer or the third party administrator. The director will reimburse the insurer, in care of a third party administrator, if applicable.

(2) Requests for reimbursement must be submitted on Form 3504, "Supplemental Disability Benefits Quarterly Reimbursement Request," and must include, but may not be limited to:

(a) Identification and address of the insurer responsible for processing the claim;

(b) The worker's name, WCD file number, date of injury, social security number, and the insurer claim number;

(c) Whether the claim is disabling or nondisabling;

(d) The primary and secondary employer's legal names;

(e) The primary and secondary employer's WCD registration numbers;

(f) The weekly wage of all jobs at the time of the injury separated by employer;

(g) The dates for the period(s) of supplemental disability due and payable to the worker. Dates must be inclusive (e.g., 1-16-02 through 1-26-02);

(h) The amount of supplemental disability paid for the periods in (2)(g);

(i) The quarter and year in which the payment was made;

(j) A signed payment certification statement verifying the payments; and

(k) Any other information required by the director.

(3) In addition to the supplemental disability reimbursement, the division shall calculate and the insurer shall be paid an administrative fee based on the annual claim processing administrative cost factor, as published in Bulletin 316.

(4) Periodically the division will audit the physical file of the insurer responsible for processing the claim to validate the amount reimbursed. Reimbursement will be disallowed and repayment will be required if, upon such audit, it is found:

(a) Payments exceeded statutory amounts due, excluding reasonable overpayments, as determined by the division;

(b) Compensation has been paid as a result of untimely or inaccurate claims processing; or

(c) Payments of compensation have not been documented, as required by OAR 436-050.

(5) Supplemental disability benefits due subject workers of an employer who is in a noncomplying status as defined in ORS 656.052 are not eligible for separate reimbursement under this rule, but remain a cost recoverable from the employer as provided by ORS 656.054(3).

(6) Claim Dispositions or Stipulated Settlements, pursuant to ORS 656.236 or 656.289 which include amounts for supplemental disability benefits due to multiple jobs, are not eligible to receive reimbursement from the Workers' Benefit Fund unless made with the prior written approval of the director.

(a) Requests for written approval of proposed dispositions must include:

(A) A copy of the proposed disposition or settlement which specifies the amount of the proposed contribution to be made from the Workers' Benefit Fund;

(B) A statement from the insurer indicating how the amount of the contribution was calculated; and

(C) Any other information required by the director.

(b) The director will not approve the disposition for reimbursement if the proposed contribution exceeds a reasonable projection of that claim's future liability to the Workers' Benefit Fund.

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

Stat. Auth.: ORS 656.704, 656.726(4) & sec. 3(5)(a), ch. 865, OL 2001

Stats. Implemented: ORS656.210, 656.704 & 656.726(4)

Hist.: WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2003(Temp), f. 8-29-03, cert. ef. 9-2-03 thru 2-28-04; WCD 11-2003(Temp), f. & cert. ef. 9-22-03 thru 2-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05

Department of Corrections Chapter 291

Adm. Order No.: DOC 11-2004(Temp)

Filed with Sec. of State: 10-21-2004

Certified to be Effective: 10-21-04 thru 4-19-05

Notice Publication Date:

Rules Adopted: 291-022-0100, 291-022-0110, 291-022-0120

Subject: Some counties have opted to cease participation in the Community Corrections Act and transfer responsibility for community corrections to the Department of Corrections rather than the county. Adoption of these rules is necessary to establish policy and procedures governing the use of force and security equipment by Department of Corrections (state) parole and probation officers in the performance of their official duties.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-022-0100

Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to outline the authority of parole and probation officers in the use of physical force, firearms, and restraints.

ADMINISTRATIVE RULES

(3) Policy: It is the policy of the Department of Corrections to authorize the use of physical force when and to the extent that it is reasonably believed to be necessary as specified in this rule. Parole and probation officers are authorized to use that amount of force that is necessary to overcome a threat, thereby minimizing the risk of injury to the officer and the threat.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 11-2004(Temp), f. & cert. ef. 10-21-04 thru 4-19-05

291-022-0110

Definitions

(1) Deadly Force: Physical force that under the circumstance, in which it is used, is readily capable of causing death or serious physical injury.

(2) Level of Force: The types of force employed, amount of that type of force employed, and that circumstances within which the force is employed.

(3) Local State Director: A person within the Department of Corrections who reports to the Chief of Community Corrections and has responsibility for managing a state community corrections office within a particular county.

(4) Offender: Any person under the supervision of Department of Corrections who is on parole, post-prison supervision, or probation status.

(5) Officer: Any state parole and probation officer certified as such by the Department of Public Safety Standards and Training.

(6) Physical Force: The use of hands, other parts of the body, objects, instruments, chemical devices, firearms, or other physical methods used for defense or to control or both.

(7) Reasonable Force: That force which the officer can objectively articulate was reasonable given the active resistance or attempts at evasion by the offender and the facts known at the time by the officer.

(8) Security Equipment: Firearms, ammunition, chemical agents, restraints and similar devices.

(9) Security Restraints: Handcuffs, temporary cuffs (flexcuffs), and other similar equipment designed to control a person from injuring himself/herself, others, and to prevent escape.

(10) Serious Physical Injury: Physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

(11) Show of Force: A demonstration of the current ability to use force, such as the massing of parole and probation officers or other officials.

(12) Use of Force: Any situation in which an employee uses physical force against an offender or other person.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 11-2004(Temp), f. & cert. ef. 10-21-04 thru 4-19-05

291-022-0120

General Provisions

(1) Security Equipment:

(a) All security equipment shall require the approval of the Director or designee before being issued and used as department authorized security equipment.

(b) Only department authorized and/or issued equipment shall be used to apply physical force to individuals.

(c) Security equipment shall not be issued to or used by an employee who has not been trained in the proper use of such devices.

(d) The local state director shall authorize the storage and use of security equipment.

(2) To the extent possible, situations involving the use of physical force should be avoided. In unavoidable incidents, and circumstances permitting, assistance should be sought from local law enforcement agencies, or fellow parole and probation officers.

(3) The goal of any use of force in a given situation must be to attain a legitimate objective. There are only two purposes an officer can have in using force. All justifiable uses of force will fall into one, or both, of these categories:

(a) Defense; and/or

(b) Control.

(4) The department requires an employee to use objectively reasonable force to overcome perceived resistance.

(5) Non-force alternatives, such as talking an offender into compliance, giving a warning verbal command, or demonstrating a show of force

should be used before actual physical force, if time and circumstances permit.

(6) An employee shall use caution prior to exercising the use of force, if time and circumstances permit, and mentally review the following:

(a) Evaluate the situation for the elements of risk;

(b) Report the situation to the supervisor; and

(c) Work with a backup employee.

(7) Use of physical force is authorized in circumstances in which warnings and other non-force alternatives are not reasonable or available to the employee.

(8) Provoking an offender to justify the use of physical force, or using physical force as punishment or discipline, is prohibited.

(9) The force used will be the type and amount that is objectively reasonable to overcome resistance.

(10) Force may be continued or escalated as dictated by circumstances in order to achieve or maintain control.

(11) Force shall be de-escalated or terminated consistent with maintaining control of the situation.

(12) First aid and/or medical attention shall be provided to an injured employee or offender as soon as possible following any use of force. This action shall be documented and attached to the Use of Force report.

(13) Employees may use physical force, to include control and compliance holds and hand-to-hand physical techniques, to control or overcome the resistance of an offender.

(14) The use of control and compliance holds to generate pain is appropriate to achieve control or overcome resistance.

(15) When using control and compliance holds, where increased pressure generally produces increased pain, employees shall use only that amount of pressure that is objectively reasonable to gain control or overcome resistance.

(16) Employees, based on their training, background, and experience, and the nature of the situation, may use a wide variety of hand-to-hand physical techniques.

(17) Deadly force shall only be used upon the objective and reasonable belief that their life or safety, or the life or safety of another, is in imminent danger of death or serious bodily injury given the totality of the facts known to the officer at the time of their action.

(18) Security Restraints:

(a) Security restraints are authorized to restrict, immobilize, and control the movement of offenders;

(b) An offender who has been arrested shall be placed in handcuffs with their hands behind their back, except when physical impossibilities exist, before and during transport;

(c) Handcuffs, or flexcuffs, should be applied consistent with the training and experience of the officer. Handcuffs will be checked for tightness and double locked.

(19) Reporting:

(a) Any time an employee is required to use any degree of force, as defined in this directive, on any offender, he/she shall promptly prepare a Use of Force Report and submit it to the local state director.

(b) In cases of injury to a person(s) that requires transport to a medical facility:

(A) Another county agency, depending upon jurisdiction, shall be immediately contacted.

(B) The appropriate investigatory agency in the jurisdiction shall be immediately contacted.

(C) The investigatory agency can include the Attorney General's office if a conflict of interest exists.

(D) The local state director shall be notified immediately. The local state director shall make a verbal report to the Chief of Community Corrections as directed.

(E) The officer who applied the force, shall prepare a Use of Force Report and forward it to the local state director.

(F) Prior to any administrative action, the local state director shall confer with the Chief of Community Corrections.

(c) In cases of application of force not resulting in injury to offenders: The officer applying the force will immediately file a Use of Force Report.

(d) If an officer unholsters his/her weapon, the local state director will notify the Chief of Community Corrections within 48 hours of the incident.

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

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

Hist.: DOC 11-2004(Temp), f. & cert. ef. 10-21-04 thru 4-19-05

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Adm. Order No.: DOC 12-2004
Filed with Sec. of State: 10-21-2004

ADMINISTRATIVE RULES

Certified to be Effective: 10-21-04

Notice Publication Date: 7-1-04

Rules Amended: 291-113-0010

Subject: This rule amendment is necessary to change the definition of functional literacy to align with that of ORS 421.084.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-113-0010

Definitions

(1) Adult Basic Education (ABE): A basic skills curriculum providing functional literacy foundations to inmates who do not possess a high school diploma or General Education Development (GED) certificate or do not function at a high school level. The ABE program emphasizes functional literacy skills with curriculum focused on family, work, and community. The ABE program also provides instruction in the processes involved in solving everyday problems and prepares inmates to meet the requirements of other educational programs. The ABE curriculum may also provide inmates with systematic preparation for the GED examination, administered according to guidelines set forth by the Oregon Department of Workforce Development and Community Colleges.

(2) Assessment: As applied in this rule, a test designed to measure the grade-level/scale score achievement of the person tested. Such instruments may include, but are not limited to, the BASIS (Basic Adult Skills Inventory System)/CASAS (Comprehensive Adult Student Assessment System) Test, or Test of Adult of Basic Education, or BEST (Basic English Skills Test).

(3) Collegiate Program: A post secondary course of studies offered through a local college or correspondence courses approved by institution/education staff and paid for by the inmate.

(4) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(5) English as a Second Language (ESL): A program which targets inmates who are non-English speakers with low or no English skills. The program focuses on improving English language skills (listening, speaking, reading, and writing).

(6) Functional Literacy: Those educational skills necessary to function independently in society, including but not limited to, reading, writing, comprehension, and arithmetic computation.

(7) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status.

(8) Intra-Institutional Assignment: An assignment in which an inmate is assigned to an education program within the Department of Corrections facility in which he/she resides.

(9) Inter-Institutional Assignment: An assignment in which an inmate is regularly transported to and from the Department of Corrections facility in which he/she resides, for the purpose of participation in another Department of Corrections facility's educational program not available to the inmate at the facility in which he/she resides.

(10) Work-Based Education (WBE): These programs develop specific skills that can assist inmates in obtaining employment after release. Many of the programs may include both training and production components.

Stat Auth: ORS 179.040, 421.084, 423.020, 423.030, 423.075 & 423.085

Stat Impl: ORS 179.040, 421.084, 423.020, 423.030, 423.075 & 423.085

Hist.: CD 10-1978(Temp), f. & ef. 5-5-78; CD 14-1978, f. & ef. 7-21-78; CD 4-1980, f. & ef. 3-28-80; CD 27-1981(Temp), f. & ef. 6-30-81; CD 56-1981, f. & ef. 12-10-81; CD 19-1983, f. & ef. 5-2-83; CD 7-1986(Temp), f. 4-18-86, ef. 5-15-86; CD 24-1986, f. & ef. 8-5-86; CD 9-1994, f. 3-18-94, cert. ef. 4-1-94; DOC 7-2003, f. & cert. ef. 4-2-03; DOC 12-2004, f. & cert. ef. 10-21-04

Adm. Order No.: DOC 13-2004

Filed with Sec. of State: 10-21-2004

Certified to be Effective: 10-21-04

Notice Publication Date: 7-1-04

Rules Amended: 291-203-0020

Subject: This rule amendment is necessary to change the definition of authorized representative to align with that of ORS 179.610(2).

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-203-0020

Definitions

(1) Assets: The total value of an inmate's (subject to the provisions of ORS 179.640(5)) equity in real and personal property of whatever kind or

nature. Assets include, but are not limited to, the inmate's stocks, bonds, cash, accounts receivable, moneys due, or any other interests, whether they are self-managed, or held by the individual's authorized representative, or by any other individual or entity on behalf of the inmate. Assets held in trust are subject to laws generally applicable to trusts.

(2) Authorized Representative: An individual or entity appointed under authority of ORS chapter 125, as guardian or conservator of an inmate, who has the ability to control the inmate's finances, and any other individual or entity holding funds or receiving benefits or income on behalf of the inmate.

(3) Charges: The amount the department has determined that the inmate is required to pay toward the cost of care.

(4) Cost of Care: All services including medical care, room, board, administrative costs and other costs not otherwise excluded by law.

(5) Custody of the Department: The court ordered sentence of an inmate to the Department of Corrections to imprison in a department operated correctional facility or contracted housing through a county, other state, or other jurisdiction.

(6) Dependents: The individuals for whom an inmate has a legal duty to support.

(7) Fair Market Value: The cash price a capable and diligent individual could obtain in a reasonable amount of time for an asset.

(8) Income: All funds received by an inmate, or for an inmate by an authorized representative from any source, whether earned or unearned, after making applicable deductions for state and federal income taxes. Income includes benefits from life insurance, income protection insurance, or any other form of award to the inmate except as prohibited by ORS 179.620(5)(a).

(9) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, probation, or post-prison supervision status.

(10) Cash Assets/Liquid Reserves: Cash and cash equivalents, accounts receivable, temporary investments such as CDs or Treasury Bills, money market accounts, and bonds that can be cashed at any time.

(11) Personal Estate: All assets including cash, liquid reserves, stocks, bonds, accounts receivable, moneys due, or any other interests, whether they are self-managed, or held by the individual's authorized representative. Personal estate also includes benefits from income protection insurance, governmental retirement or disability insurance, such as Social Security, Veterans, state, federal, and railroad retirement benefits and benefits from life insurance or any other form of award except as prohibited in ORS 179.610(5)(a) and (5)(b).

(12) Primary Automobile: The automobile, if the person has more than one, which the person would choose to keep if required to sell all but one. If the person has only one, it is the primary personal automobile.

(13) Primary Person Residence: The home the inmate owns, or is purchasing, and in which the inmate lived prior to entering the custody of the department, or in which the inmate will live after leaving the custody of the department.

(14) Personal Support Allowance: The cash allowed for reasonable miscellaneous expenses while in the custody of the department, including but not limited to, expenses for personal grooming and hygiene items; books, newspapers, or other publications; or snacks or refreshments not provided by the department.

(15) Recoupment Liens: A charge or security or encumbrance upon real or personal property that can be used to satisfy the amount due for the inmate's cost of care.

(16) Support for Dependents: The cash necessary to meet the reasonable needs of the dependents, less the amount the dependent receives from any other source. Support for dependents excludes administratively or judicially ordered child and/or spousal support.

(17) Distrain Warrant: A warrant or document issued by the department directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property which is subject to satisfaction of the recoupment lien.

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

Stat. Auth.: ORS 179.040, 179.640, 179.770, 423.020, 423.030 & 423.075

Stat Impl: ORS 179.040, 179.610 - 179.770, 423.020, 423.030 & 423.075

Hist.: DOC 2-2003(Temp), f. & cert. ef. 2-7-03 thru 8-6-03; DOC 11-2003, f. & cert. ef. 8-6-03; DOC 13-2004, f. & cert. ef. 10-21-04

Adm. Order No.: DOC 14-2004

Filed with Sec. of State: 11-2-2004

Certified to be Effective: 11-2-04

Notice Publication Date: 10-1-04

ADMINISTRATIVE RULES

Rules Adopted: 291-153-0020

Rules Amended: 291-153-0005

Rules Repealed: 291-153-0010

Subject: Amendments to the department's rules are necessary to ensure that the department's and the Board of Parole and Post-Prison Supervision's policies and procedures governing who may accompany an inmate at a hearing before the Board are promulgated jointly as required by ORS 144.123.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-153-0005

Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 144.123, 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to jointly establish with the Board of Parole and Post-Prison Supervision policies and procedures governing who may accompany an inmate at a hearing before the Board of Parole and Post-Prison Supervision.

(3) Policy:

(a) It is the joint policy of the Department of Corrections and Board of Parole and Post-Prison Supervision that inmates be permitted to have a person accompany them in hearings before the Board in accordance with ORS 144.123, as provided in these rules.

(b) A person's access to a Department of Corrections facility is subject to the Department of Corrections rules on Facility Access (OAR 291-016), Visiting (Inmate) (OAR 291-127), and this rule, and may be prohibited or restricted by the functional unit manager or designee of the facility in which the hearing is being conducted when deemed necessary or advisable to maintain the health, safety and security of staff, inmates, or the public, or to maintain the safe, secure, and orderly operation and management of the facility.

Stat. Auth.: ORS 144.123, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.123, 179.040, 423.020, 423.030 & 423.075

Hist.: CD 9-1990, f. & cert. ef. 5-29-90; CD 12-1993, f. 4-21-93, cert. ef. 5-1-93; DOC 4-2004(Temp), f. & cert. ef. 5-14-04 thru 11-10-04; DOC 14-2004, f. & cert. ef. 11-2-04

291-153-0020

Who May Accompany an Inmate at a Board of Parole and Post-Prison Supervision Hearing

(1) Inmate Accompaniment: When appearing before the Board of Parole and Post-Prison Supervision in a hearing, an inmate may be accompanied at the Department of Corrections facility in which the inmate is confined, subject to the prior approval of the facility functional unit manager or designee, by:

(a) A person who has been approved for privileged visiting in accordance with the Department of Corrections rule on Visiting (Inmate) (OAR 291-127);

(b) An assigned inmate legal assistant, selected in accordance with the Department of Corrections rule on Legal Affairs (Inmate) (OAR 291-139) from the Department of Corrections facility where the inmate is confined; or

(c) The inmate's attorney.

(2) In addition to those persons specified in subsection (1) of this rule, the inmate may be accompanied at the hearing via telephone or videoconference by such other person, other than another inmate, as the Board of Parole and Post-Prison Supervision, in its discretion, may approve by prior arrangement.

(3) The Department of Corrections, if requested by the inmate or the Board, will assign an assigned inmate legal assistant from the Department of Corrections facility where the inmate is confined to accompany an inmate at a Board hearing.

(4) Others Who May Attend/Appear at a Board Hearing:

(a) Victim and District Attorney: The victim, personally, or by counsel or other representative, and the District Attorney from the committing jurisdiction or his/her representative, may attend/appear Board of Parole and Post-Prison Supervision hearings.

(b) Public: Members of the public may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings.

(c) Media Representatives: Approved media representatives may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings.

(d) Department of Corrections Employees, Volunteers, and Contractors: Department of Corrections employees, volunteers, and contractors may attend, but not participate in, Board of Parole and Post-Prison

Supervision hearings, except as requested by the Board in order to provide testimony in the hearing.

(5) Means and Manner of Appearance/Attendance:

(a) Board Hearings Conducted With Inmate in Person Within a Department of Corrections Facility:

(A) If the inmate will appear before the Board of Parole and Post-Prison Supervision in person within a Department of Corrections facility, the person(s) accompanying the inmate, the victim and the District Attorney, and/or their representatives, members of the public, and approved media representatives may appeal/attend the hearing in person at the Department of Corrections facility, subject to the approval of the functional unit manager of the facility in which the hearing is being conducted, or via telephone or videoconference as arranged in advance with the Board.

(B) A person desiring to appear/attend a Board of Parole and Post-Prison Supervision hearing in a Department of Corrections facility must contact the functional unit manager or designee of the facility in which the hearing is scheduled to take place in advance of the hearing to arrange for their attendance/appearance.

(C) A person who appears/attend a Board of Parole and Post-Prison Supervision hearing in a Department of Corrections facility is subject to the rule of conduct, and the terms and conditions of visiting set force in the department's rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127).

(b) Board Hearings Conducted With Inmate Via Telephone or Videoconference: If the inmate will appear before the Board of Parole and Post-Prison Supervision via telephone or videoconference, the person(s) accompanying the inmate, the victim and the District Attorney, and/or their representatives, members of the public, and approved media representatives may appear/attend the hearing at the place in which the Board is meeting for purposes of conducting the hearing, or via telephone or videoconference, as arranged in advance with the Board.

(6) Conduct of the Hearing: The Board of Parole and Post-Prison Supervision may eject any disruptive person from a hearing. The Board may require all persons to leave the designated hearing area during deliberations.

Stat Auth.: ORS 144.123, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.123, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 4-2004(Temp), f. & cert. ef. 5-14-04 thru 11-10-04; DOC 14-2004, f. & cert. ef. 11-2-04

Adm. Order No.: DOC 15-2004

Filed with Sec. of State: 11-2-2004

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Rules Transferred: 291-013-0090 to 291-013-0104

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

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291-013-0010

Definitions

(1) Carotid Hold: Application of a hold to the neck that restricts deoxygenated blood leaving the brain, which may result in the person to whom it is applied becoming unconscious.

(2) Chemical Agents: Chemical compounds that when deployed are designed to cause sufficient physiological effect to stop, control or temporarily immobilize an individual. Chemical agents are commonly referred to as CS (orthochlorobenzylidene malononitrile), CN (2-chloroacetophenone) and OC (Oleoresin Capsicum).

(3) Choke Hold: Application of physical pressure applied directly to the neck area to restrict air from entering the lungs.

(4) Co-Located Minimum Security Facility: A minimum security facility on the grounds of a medium or higher security facility, but not within the fenced perimeter of this higher security facility.

(5) Corporal Punishment: The use of physical force for the purpose of punishment.

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(6) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(7) Electronic Immobilizing Devices: Security equipment designed to stop, control or temporarily immobilize through the use of high voltage, low amperage electric shock.

(8) Excessive Force: A type or amount of force beyond that which is reasonably necessary to control the situation and achieve the correctional objective; or the continued use of force after it is no longer reasonably necessary.

(9) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, an Assistant Director or administrator and has responsibility for delivery of program services or coordination of program operations.

(10) Hogtie Method: Binding a person's wrists and ankles together behind the back while in a prone position.

(11) Lethal Force: Physical force that has substantial risk of causing death.

(12) Level of Force: The type of force employed, amount of that type of force employed, and the circumstances within which the force is employed.

(13) Medium or Higher Security Facility: A medium or higher security facility may house multiple custody classifications of inmates within its secure perimeter, including minimum custody inmates. Medium or higher security facilities will treat all inmates as if they are classified medium or higher custody.

(14) Officer-in-Charge: That person designated by the functional unit manager to supervise and make operational decisions in accordance with department policy, rule or procedure during periods when the functional unit manager or officer-of-the-day are not readily available.

(15) Physical Force: The use of hands, other parts of the body, objects, instruments, chemical devices, electronic devices, firearms or other physical methods used to restrain, subdue, control, intimidate or to compel persons to act in a particular way, or to stop acting in a particular way.

(16) Planned Use of Force: The use of force in situations where time and circumstances allow for consultation with, and approval by, higher ranking employees, and where there is some opportunity to plan the actual use of force.

(17) Positional Asphyxia: A reduction in oxygen in the blood stream and tissues due to an impairment of a person's respiratory system caused by body positioning.

(18) Prone Restraint: The process of placing an individual "face-down" upon a surface and then securing or limiting the movement of the arms, legs, or trunk from that surface.

(19) Reactive Use of Force: The use of force in situations where time and circumstances do not permit approval by higher ranking employees, or consultation or planning.

(20) Reasonable Force: The use of physical force to achieve a legitimate correctional objective, where the type and amount of force are consistent with the situation and the objective to be achieved; and where alternatives to physical force are unavailable or ineffective; and where the force used is the minimum necessary to control the situation.

(21) Restraint Chair: A restraining device that allows for a person to sit upright in a chair that is designed to immobilize the person's arms and legs. In addition, the device provides for protection of the head for the person being restrained.

(22) Secure Custody: Custody exercised upon a person under the jurisdiction of the Department of Corrections by means of physical confinement within a facility of the Department of Corrections, or direct physical supervision of a person with or without use of restraints while outside a Department of Corrections facility.

(23) Security Equipment: Firearms, ammunition, batons, chemical agents, security restraints, electronic immobilizing devices, and similar devices.

(24) Security Restraints: Handcuffs, temporary cuffs, leg irons, belly chains, restraining chairs, and other similar equipment designed to restrict and control the person's movement from injuring himself/herself, others, and escape.

(25) Serious Physical Injury: Physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

(26) Show of Force: A demonstration of the current ability to use force, such as the massing of officers or tactical squads.

(27) Stand Alone Minimum Security Facility: A minimum security facility that is not on the grounds of a medium or higher security facility.

(28) Specialty Impact Munitions: Munitions designed to incapacitate, distract, and control a subject with less likelihood of life threatening injury.

(29) Therapeutic Restraints: A type of restraint applied to an inmate for medical or mental health purposes, and designed to limit an inmate's movement. The kinds of restraints that may be used for therapeutic purposes include, but are not limited to, leather, rubber or canvas restraints for the arms, legs and upper torso.

(30) Use of Force: Any situation in which an employee uses physical force against an inmate or other person, except those situations in which security restraints are used in a standard manner for arrest, escort, or transport, or in which therapeutic restraints are used.

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

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

Hist.: CD 35-1978, f. 11-9-78, ef. 11-13-78; CD 7-1982(Temp), f. & ef. 1-29-82; CD 12-1982, f. & ef. 3-19-82; CD 3-1983, f. & ef. 1-20-83; CD 40-1985, f. & ef. 8-16-85; CD 42-1986, f. & ef. 10-17-86; CD 26-1987, f. & ef. 6-5-87; CD 12-1988, f. & cert. ef. 9-30-88; CD 21-1988(Temp), f. & cert. ef. 12-30-88; CD 9-1989, f. & cert. ef. 6-20-89; CD 20-1991, f. & cert. ef. 8-28-91; CD 3-1995, f. & cert. ef. 1-19-95; CD 20-1995, f. 10-26-95, cert. ef. 11-1-95; DOC 14-1998, f. & cert. ef. 6-18-98; DOC 3-2004(Temp), f. & cert. ef. 1-27-04 thru 7-25-04; Administrative correction 8-19-04; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0055

Applicability of the Rules

(1) All employees shall be thoroughly familiar with the departmental situations section of this rule.

(2) Those employees whose duties require them to be in both institutional and community situations shall be thoroughly familiar with all sections of this rule. Parole and probation officers shall follow the department's rule on Use of Force (Community Corrections) (OAR 291-022) to provide guidance and direction in use of force incidents.

(3) If there is any question about specific equipment, procedures, etc., in a use of force situation, an employee shall be directed by the location of the situation, either in an institution or the community, rather than by distinctions concerning where he/she is duty stationed.

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

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

Hist.: CD 3-1995, f. & cert. ef. 1-19-95; DOC 14-1998, f. & cert. ef. 6-18-98; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0065

General Provisions-Use of Force

(1) Employees are authorized to apply physical force when and to the degree that it reasonably appears necessary. Use of force will be authorized to maintain legitimate correctional objectives:

(a) For self defense or defend another person against an inmate using lawful force;

(b) To prevent the escape of an inmate from a state correctional institution or facility;

(c) To prevent the escape of an inmate during transportation;

(d) To prevent or stop the serious destruction of property;

(e) To quell a disturbance;

(f) To overcome an inmate's physical resistance to a lawful command;

or

(g) To prevent an inmate from injuring or killing himself/herself or other persons.

(2) Physical force shall be employed when it reasonably appears that other alternatives are not feasible to the situation. When the use of force is justified, only the amount and type of force that reasonably appears necessary to accomplish the authorized objective shall be used. Force shall be de-escalated or terminated as soon as possible consistent with resuming and maintaining control of the situation.

(a) An employee shall consider all types and amounts of force available and begin with the lowest type and amount that is reasonable given the specifics of the situation.

(b) Non-force alternatives, such as talking an inmate into compliance, giving a warning, verbal command or demonstrating a show of force, should be used before actual physical force, if time and circumstances permit.

(c) Immediate use of physical force is authorized in circumstances in which warnings and other non-force alternatives, such as talking an inmate into compliance, are not reasonable or available to the employee.

(d) Employees may use physical force, to include control and compliance holds and hand-to-hand physical techniques, to restrict, immobilize, and attain control of the resisting inmate.

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(e) Both the carotid hold and choke hold are prohibited except in self-defense or defense of another where there is no reasonable alternative and where the situation is a clear and immediate threat to life.

(3) Prior to the use of force when time and circumstances permit, the employee will warn the inmate that force will be used if he/she does not immediately comply with staff orders.

(4) An employee will exercise caution before the use of force, if time and circumstances permit, by performing the following:

- (a) Evaluate the situation for the elements of risk;
- (b) Report the situation to master control or a supervisor; and
- (c) Work with a backup employee, preferably with the direct observation of a supervisor.

(5) Use of force and subsequent restraints shall be used only for restraint and not for punishment.

(6) Intentional verbal harassment or public humiliation to provoke an inmate into a position that would justify the use of force is prohibited.

(7) Nothing in these rules is intended, or should be interpreted, as preventing an employee from taking reasonable measures to protect himself/herself, to protect the lives of others, stop disturbances or escapes, or prevent serious destruction of state property.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.030
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.030
Hist.: CD 3-1995, f. & cert. ef. 1-19-95; CD 20-1995, f. 10-26-95, cert. ef. 11-1-95; DOC 14-1998, f. & cert. ef. 6-18-98; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0070

Planned Use of Force

(1) The functional unit manager or designee will be contacted for authorization of the planned use of force involving firearms, batons, water hoses, electronic immobilizing devices, specialty impact munitions, and chemical agents other than aerosol sprays.

(2) Any planned use of force shall be carried out under the personal direction of supervisory or higher level staff, and only after consultation with and approval of the officer-in-charge. The officer-in-charge may be present when the use of force is employed if there is no anticipated danger of becoming a hostage.

(a) Chemical agents, electronic immobilizing device, baton, water force, or specialty impact munitions may be used prior to the arrival of the supervising employee if immediate use is essential to prevent and/or control death, serious injury, major disturbance or substantial destruction of property.

(b) If an employee is assaulted, he/she will not participate in a planned use of force, unless no other option is available; e.g., no other employees are readily available to participate in the planned use of force.

(3) A health care professional shall be contacted, if on duty at the facility, prior to the planned use of force situation, to ensure medical assistance will be ready, if necessary.

(4) Every planned use of force situation shall be videotaped provided that time and circumstances permit.

(a) The video recording should include a briefing, the use of force incident, and debriefing. The video recording should not be stopped during the use of force incident.

(b) The original incident tape and will be stored by the functional unit for three years from the date of the incident, or the time stored will be extended until the resolution of pending or actual litigation, or as otherwise directed by the department's legal counsel. A back-up tape will be made and sent to Inspections Division. Inspections will store the back-up tape for a period of three years. Back-up tapes will be returned to the originating facility for disposition. A use of force videotape may be released with the approval of the functional unit manager or designee.

(5) The commander shall authorize the type and amount of force used during any declared emergency at a facility except for reactive use of force.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.030
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.030
Hist.: CD 3-1995, f. & cert. ef. 1-19-95; CD 20-1995, f. 10-26-95, cert. ef. 11-1-95; DOC 14-1998, f. & cert. ef. 6-18-98, Renumbered from 291-013-0125; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0080

Reactive Use of Force

(1) Reactive use of force will be allowed for situations where time and circumstances do not permit approval by a supervisor or consultation or planning.

(2) Employees may use any available equipment or weapons to prevent the loss of life or serious bodily injury, if no other reasonable alternative or time is available.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.030
Stats. Implemented: ORS 179.040, 423.020, 423.030
Hist.: DOC 14-1998, f. & cert. ef. 6-18-98; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0100

Lethal Force

(1) Employees shall consider every reasonable means of control before resorting to the use of lethal force.

(2) Use of Lethal Force in Medium or Higher Security Facilities: Lethal force may be used when and to the extent that an employee reasonably believes it necessary:

(a) To prevent imminent serious bodily injury or death to one's self or another person.

(b) To prevent escape by an inmate from secure custody, whether inside or outside the secure perimeter of a Department of Corrections facility.

(c) To prevent or stop a riot or other group disturbance by inmates where there is reason to believe an inmate poses a threat of escape or imminent serious bodily injury or death to another person.

(d) To prevent an unauthorized person(s) or motor vehicle(s) from attempting to breach the secure perimeter of a Department of Corrections facility in order to assist in an escape or insurrection by an inmate(s).

(e) To prevent or stop extensive damage to property if, and only if, its loss or destruction would lead directly to escape or imminent serious bodily injury or death to another person.

(f) To prevent or stop an inmate or other person from setting or spreading fire to or within a building within the secure perimeter of a Department of Corrections facility, where there is reason to believe the fire poses a threat of serious bodily injury or death to another person.

(3) Any inmate moving toward an unauthorized motor vehicle or airborne craft, whether inside or outside the secure perimeter of the facility, shall be considered to be a potential escape attempt. Shots shall not be fired at an airborne craft in a flight over the perimeter, landing, on the ground, or taking off from the facility except in self defense to one's self or another person where the situation is a clear and immediate threat to life.

(4) Use of Lethal Force in Stand Alone Minimum Security Facilities: Lethal force may not be used to prevent the escape of an inmate from a stand alone minimum security facility.

(5) Use of Lethal Force in Co-Located Minimum Security Facilities: Lethal force may not be used to prevent the escape of an inmate from a co-located minimum security facility unless staff can readily determine the inmate is classified as medium or higher custody.

(6) Use of lethal force in community situations; e.g., transport of an inmate, supervision of outside work crews, is covered under OAR 291-105-0215.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & ORS 423.030
Stats. Implemented: ORS 179.040, 423.020, 423.030 & ORS 423.030
Hist.: CD 3-1995, f. & cert. ef. 1-19-95; DOC 14-1998, f. & cert. ef. 6-18-98, Renumbered from 291-013-0155; DOC 3-2004(Temp), f. & cert. ef. 1-27-04 thru 7-25-04; Administrative correction 8-19-04; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0104

Security Equipment

(1) General Provisions:

(a) The Chief of Security will review all security equipment. The Director or designee shall approve all security equipment before it is issued and used as department authorized security equipment.

(b) Only department authorized and/or issued equipment shall be used to apply physical force to individuals.

(c) Security equipment shall not be issued to or used by an employee who has not been trained in the proper use of such devices.

(d) The above three sections (a-c) apply to all use of force incidents except for situations that require reactive use of force where there is a clear and imminent threat of death or great bodily injury, and where there is no other reasonable alternative.

(e) The storage and use of security equipment will be authorized by the Director through the appropriate functional unit manager.

(2) Security Restraints — General Use of Restraints:

(a) Security restraints are authorized to restrict, immobilize and control the movement of an inmate.

(b) The standard routine use of security restraints for escort or transportation of an inmate is not a use of force within the context of these rules. Situations in which an inmate has refused to be placed in security restraints, or has resisted after being placed in restraints are considered use of force within the context of these rules.

(3) Restricting Movement:

(a) Security restraints may be used to restrain an inmate with the express approval of the officer-in-charge, upon a demonstration that the inmate is out of control and engaged in behavior which, if unrestrained could:

(A) Result in significant destruction of property;

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(B) Constitute a serious health or injury hazard to the inmate or others; or

(C) Escalate into a serious disturbance.

(b) Security restraints used to restrain an out-of-control inmate shall be terminated when the inmate has demonstrated behavior which would not result in the above three sections (A–C).

(c) Placing an inmate in security restraints or a restraint chair shall be considered a use of force within the context of these rules, except when placing an inmate in handcuffs/restraints for transportation or escort.

(d) Security restraints will not be placed around the neck or head, nor in any manner that restricts blood circulation or breathing. Security staff shall receive training regarding the known risk factors for positional asphyxia.

(e) The hogtie method will not be used as a security restraint.

(f) Employees in general shall ensure that unnecessary pressure is not placed on the inmate's chest, back or neck while applying restraints. Employees shall maintain close observation of a restrained inmate in order to detect breathing difficulties and/or loss of consciousness.

(g) While using the prone restraint position when the correctional objective is met the inmate should be placed on his/her side or moved into a sitting position as soon as feasible. Employees will assess the inmate's physical condition.

(h) Restrained inmates will never be transported on their stomach.

(i) An employee shall check at least every 30 minutes and verify security restraints are not causing obvious injury or an obvious medical problem when an inmate has been placed in restraints as a result of a use of force situation. Each check of the restraints will be documented. A copy of the documentation shall accompany the unusual incident report.

(j) The officer-in-charge shall evaluate the need to restrain an out-of-control inmate every two hours with written documentation for the reason(s) to continue or discontinue security restraints or restraint chair. The documentation shall accompany the use-of-force review documentation.

(k) The officer-in-charge will notify a health care professional as soon as feasible, but not later than four hours from the application of security restraints or restraint chair.

(l) The health care professional, when notified, will perform the following:

(A) Evaluate the inmate's condition to verify the security restraints are not causing injury or an obvious medical problem;

(B) Evaluate the inmate's mental status and notify a qualified mental health professional, if necessary;

(C) Consider treatment or intervention as an alternative, or in conjunction with security restraints;

(D) Document the results of the evaluation; and

(E) Physically re-evaluate sections A-D above every two hours.

(m) Use of security restraints or restraint chair to restrain an out-of-control inmate will be documented and reported by the officer-in-charge to the functional unit manager or designee. The documentation shall accompany the use of force review documentation.

(n) Continued use of security restraints applied for a time period longer than eight hours, and every eight hours thereafter, shall require the written approval of the functional unit manager or designee in addition to the requirements of sections (j), (k), and (l) above.

(o) Continued use of the restraint chair for a time period longer than two hours, and every two hours thereafter, shall require the written or verbal approval of the functional unit manager or designee in addition to the requirements of sections (j), (k), and (l) above.

(p) Continued use of the restraint chair for a time period longer than two hours, and every two hours thereafter, during the transporting of an inmate shall require the verbal approval of the functional unit manager or designee. The officer-in-charge of the transport shall ensure that observation of the inmate is maintained and documented on the Trip Documentation Sheet every 30 minutes. The officer-in-charge shall ensure that the inmate is evaluated by a health care professional once the final destination is reached. Placing an inmate in the restraint chair shall be considered a use of force within the context of these rules, except when the restraint chair is being utilized as additional seating for inmates during transfers.

(q) Therapeutic Restraints: The documentation, application and use of therapeutic restraints will not be considered a use of force situation, but shall be in accordance with the department's rule on **Therapeutic Restraints** (OAR 291-071). Therapeutic restraints will be:

(A) Applied to an inmate only for medical or mental health treatment to limit the inmate's movement; and

(B) Applied to an inmate only upon the documented verbal or written order of a physician, except in the absence of a physician, a registered nurse may authorize the application of therapeutic restraints for a period not to exceed one hour.

(4) Chemical Agents, Electronic Immobilizing Devices, Batons, Water Force and Specialty Impact Munitions:

(a) The use of chemical agents other than aerosol spray, electronic immobilizing devices, batons, water force and specialty impact munitions shall be authorized only by the functional unit manager or designee. The decision to use chemical agents, electronic immobilizing devices, batons, water force and specialty impact munitions shall be based on the level of force that, in the judgment of the functional unit manager or designee, is most likely to resolve the situation with the least amount of injury to all parties involved.

(b) The use of chemical agents, electronic immobilizing devices, batons, water force and specialty impact munitions may be used to subdue an inmate when the level of physical hands-on force required to subdue the inmate would potentially subject the employee, inmate or others to greater injury than would be incurred through the use of this security equipment.

(5) Use of Chemical Agents (OC, CN, or CS):

(a) The amount and type of chemical agent used and the means of dispersal shall be limited to that necessary to achieve the correctional objective and be used in accordance with the manufacturer's instructions and departmental training.

(b) Pepperball Launching Systems (PLS) is an authorized delivery system and is intended for the dispersal of chemical agents in situations where the use of aerosol type agents would not be effective. The PLS shall only be deployed by employees trained in their use and effects.

(c) Prior to the use of any chemical agent, and where time and circumstances permit, the inmate against whom it is directed shall be warned chemical agents will be used.

(d) If possible, a chemical agent shall not be used against an inmate known to suffer cardio-vascular, convulsive or respiratory ailments.

(e) An employee recently assaulted by an inmate shall not approve or apply chemical agents to the particular inmate, unless there is no reasonable alternative.

(f) An inmate shall not be restrained or held for the sole purpose of rendering him/her a more stationary target for a chemical agent. If chemical agents are administered to a handcuffed inmate, staff shall document the reason why the removal of the handcuffs was not feasible.

(g) Those affected by a chemical agent shall be permitted to wash their face, eyes and other exposed skin areas, as soon as possible after the chemical agent has been used.

(h) Those affected by a chemical agent in a closed area shall be permitted to move to an uncontaminated area as soon as possible after the chemical agent has been used.

(i) Clothing exposed to a chemical agent shall be removed as soon as feasible, and clean clothing made immediately available.

(j) An employee(s) or inmate(s) affected by a chemical agent shall be examined by a health care professional as soon as feasible after the chemical agent has been used.

(k) An inmate(s) receiving an application of a chemical agent shall be under continuous staff observation for the first ten minutes.

(A) The inmate shall then be observed approximately every ten minutes for the first 30 minutes after receiving the application of a chemical agent.

(B) All observations shall be documented with a date and time reference.

(C) The documentation shall accompany the use of force review documentation.

(6) Use of Electronic Immobilizing Devices:

(a) Electronic immobilizing devices authorized by the department include hand-held devices, electronic shield, and electronic restraint belt.

(b) As soon as feasible following each use of an electronic immobilizing device, the inmate shall be afforded medical examination and treatment.

(c) Electronic immobilizing devices will not be used in conjunction with chemical agents.

(7) Use of Specialty Impact Weapons:

(a) Specialty impact munitions are intended as a less lethal alternative to the use of deadly force. Use of specialty impact munitions shall be authorized by the functional unit manager or designee prior to deployment.

(b) After each use of specialty impact munitions, exposed inmates shall be examined by Health Services personnel.

(8) Firearms:

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(a) The functional unit manager or designee will authorize the location and carrying of a department issued firearm on the grounds of a facility.

(b) A Transportation Unit officer or facility correctional officer may carry a firearm in the performance of his/her duties as authorized by the functional unit manager/designee and in accordance with the department policy.

(c) Prior to resorting to the use of firearms against an inmate or other persons, time and circumstances permitting, an employee shall first issue an appropriate warning to the inmate or other person in a readily understandable fashion. An appropriate warning may include, but is not limited to, one or more of the following:

- (A) Shouting;
- (B) Blowing a whistle;
- (C) Hand signals; or
- (D) Firing a warning shot.

(d) The discharge of a firearm will be handled in accordance with the departmental policy. The State Police or local law enforcement officials shall be notified to investigate any discharge of a firearm except for training or accidental discharge where injury or significant property damage has not occurred. The external law enforcement investigation shall be separate from the full review.

(e) Any employee involved in the discharge of a firearm in a situation on duty shall immediately report the incident to the officer-in-charge. The employee shall immediately prepare an Unusual Incident Report.

(f) A warning shot is the least preferred method of warning. It should be used only in situations where other warning methods are not practical or effective, and when there is a target that is sufficiently large to minimize the risk of harm to others from a missed shot or ricochet.

(g) Time and circumstances permitting, an employee shall attempt to warn an inmate that is observed to be:

(A) Entering or inside a restricted security perimeter zone;

(B) Tampering with or cutting security perimeter equipment or fence/wall;

(C) On or climbing a security fence/wall;

(D) Moving toward any motor vehicle or airborne craft in an obvious attempt to escape;

(E) Engaged in any other behavior that is a clear or obvious attempt to escape; or

(F) Engaged in any behavior that poses serious bodily injury or death to oneself or another person.

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

Stats. Implemented: ORS 179.040, 423.020, 423.030

Hist.: DOC 14-1998, f. & cert. ef. 6-18-98; Renumbered from 291-013-0090; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0120

Injury, Death or Hostage

(1) Whenever an employee's use of force results in the serious injury or death of another, he/she shall be placed on leave until an investigation of the matter by the Inspector General and/or State Police can be concluded.

(2) Whenever an employee has been taken hostage, he/she shall be placed on leave with pay until medical and psychological clearance has been obtained.

(3) Any employee involved in or immediately exposed to a critical incident involving the serious injury, hostage or death of another shall be provided a critical incident stress debriefing.

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

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

Hist.: CD 3-1995, f. & cert. ef. 1-19-95; DOC 14-1998, f. & cert. ef. 6-18-98, Renumbered from 291-013-0085; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0130

Notifications

(1) Whenever force is used, a detailed written report shall be prepared. The Unusual Incident Report (CD 115) will be used as the primary document to report all use of force situations.

(2) All employees witnessing or directly involved in a use of force incident shall individually prepare and submit a written memorandum describing their involvement and observation regarding the incident. The memorandum will be attached to the Unusual Incident Report.

(3) A Use of Force — Preliminary Review Summary (CD 1346) will accompany the Unusual Incident Report.

(4) Supervisory notification and authorization will be obtained prior to a planned use of force.

(5) The appropriate supervisor shall be notified by the involved employee(s) as soon as possible following a reactive use of force. The func-

tional unit manager or designee will be notified immediately following any use of force incident.

(6) The Unusual Incident Report will be forwarded to the DOC Chief of Security within five working days of the incident.

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

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

Hist.: CD 3-1995, f. & cert. ef. 1-19-95; DOC 14-1998, f. & cert. ef. 6-18-98, Renumbered from 291-013-0095; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0140

Reviews

(1) General:

(a) Whenever staff employs force in response to an incident involving an inmate, a preliminary review of the use of force incident shall be conducted in accordance with the procedures established in these rules.

(b) A full review of a use of force incident shall be conducted by independent departmental review in accordance with the procedures established in these rules when requested by the Inspector General, or when the following circumstances exist:

(A) A person received a serious physical injury in the course of the use of force incident; or

(B) A firearm was discharged during the incident, as defined in the firearms section of OAR 291-013-0105.

(c) The Inspector General may decide if the full review process for the incident requires assembly of a departmental review team to conduct the full review, or order a separate investigation be conducted by a special investigator from the Investigations Unit.

(2) Preliminary Review:

(a) The officer-in-charge shall conduct a preliminary review of all use of force incidents within 48 hours of the incident.

(b) Staff involved in the use of force incident shall prepare, assemble and provide to the officer-in-charge all information and records that are relevant to the incident, including but not limited to reports, documents, videos, and photographs of involved persons and witnesses. Staff and/or inmates may be interviewed as necessary to clarify or obtain relevant information. The officer-in-charge shall review the information and records to ensure the documentation of the incident is complete.

(c) The officer-in-charge shall review the documentation for compliance with administrative directives and prepare a preliminary review report. The officer-in-charge shall forward the preliminary review report and supporting documentation to the Assistant Superintendent of Security/security manager, with one of the following recommendations:

(A) In compliance with administrative directives, requires only a preliminary review; and

(i) No further action is required; or

(ii) Further corrective action is required by the functional unit manager or designee to address perceived training, security, or other operational issues;

(B) In compliance with administrative directives, but requires a full review; or

(C) Not in compliance with administrative directives, but requires only a preliminary review because appropriate corrective action has been taken by the functional unit manager or designee; or

(D) Not in compliance with administrative directives, and requires a full review.

(d) The Assistant Superintendent of Security/security manager shall review the preliminary review report and all supporting documentation and make any necessary modification or additions he/she deems necessary. The review shall include a preliminary review of the video tape(s) and all associated reports. The preliminary review report and supporting documentation shall be forwarded to the functional unit manager.

(e) The functional unit manager shall review the preliminary review report and all supporting documentation and make any necessary modification or additions he/she deems necessary. The review shall include a preliminary review of the video tape(s) and all associated reports. The functional unit manager shall document all corrective action taken. If the functional unit manager notes signs of excessive force, he/she shall notify the Inspector General directly and provide necessary documents, so that there is no undue delay in initiating a full review or separate investigation. The functional unit manager shall make his/her recommendation on the preliminary review and forward the preliminary review and supporting documentation to the Chief of Security.

(f) The Chief of Security shall review the final preliminary review report and supporting documentation, make his/her recommendation on the preliminary review, and forward all relevant information to the Inspector General for final review determination.

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(g) The Inspector General shall review the preliminary review report and supporting documentation. The Inspector General may determine that no further review is required or may request a full review of the use of force incident.

(3) Full Review:

(a) When a full review of a use of force incident is requested by the Inspector General or otherwise required under these rules, a departmental review team shall be assembled to conduct the full review, or a separate investigation shall be conducted by a special investigator from the Investigations Unit.

(b) The departmental review team shall include, at a minimum, a representative from Special Investigations assigned by the Inspector General and a representative from two separate functional units other than the functional unit in which the incident took place. The functional unit representatives may include a represented employee. The Special Investigations representative shall chair the review team and arrange for the appointment of the review team members in consultation with the functional unit managers.

(c) The departmental review team shall review the final preliminary review report and all supporting documentation for compliance with administrative directives.

(d) If any member of the review team deems it necessary or advisable to have additional staff or inmate interviews conducted, the review team chair shall arrange for an Investigations Unit employee(s) to conduct the interview(s).

(e) If the review team chair determines that a crime may have been committed in the course of the use of force incident, he/she shall contact the State Police or local law enforcement officials before arranging for any additional interview(s), to determine if the law enforcement officials are conducting a criminal investigation regarding the incident, and if so, whether the additional interview(s) would interfere with the investigation.

(f) If advised that the interview(s) would interfere with a pending criminal investigation, the interview(s) shall be postponed until the criminal investigation has been concluded.

(g) Evaluation Report:

(A) After completing the review process, the review team shall prepare and submit its evaluation report to the Inspector General within 30 working days following completion of the full review.

(B) The report shall set forth the departmental review team's determination whether the actions taken were in compliance with Department of Corrections administrative directive(s).

(C) If the review team finds evidence of noncompliance, it shall specify these findings and the rationale upon which the findings have been based in its report.

(D) The Inspector General shall review the report for completeness and forward it to the Institutions Administrator, Chief of Security, and functional unit manager for review and any necessary action.

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

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

Hist.: CD 3-1995, f. & cert. ef. 1-19-95; CD 20-1995, f. 10-26-95, cert. ef. 11-1-95; DOC 14-1998, f. & cert. ef. 6-18-98, Renumbered from 291-013-0105; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0185

General Provisions

(1) An employee performing duties in the community will not participate in any planned use of force situations.

(2) An employee performing duties in the community will immediately contact the local law enforcement agency for a crime in progress or anticipated use of force to allow the law enforcement agency to resolve the situation.

(3) The local law enforcement agency will be the primary agency expected to resolve incidents in the community involving the use of force.

(4) An employee's decision to remain at the scene of a potentially dangerous situation in the community, or to become involved with cooperative efforts with the law enforcement agency will be based on safety and tactical judgments that exclude whether he/she is carrying a firearm.

(5) An employee shall always use the minimum force that is reasonably necessary to protect the employee or another person from bodily harm, or restrain or subdue a resistant inmate, or prevent the escape of an inmate.

(6) Escalation to a higher level of force is permitted only when such a higher level of force is warranted by the actions, apparent intentions, and apparent capabilities of the inmate, suspect, or assailant.

(7) The use of force must be objectively reasonable under all the circumstances known to the employees at the time. The use of force may range from verbal commands to the use of lethal force. If the force other

than lethal force reasonably appears to be sufficient to achieve the correctional objective, lethal force shall not be used.

(8) Lethal and non-lethal devices shall be concealed from the general public when and where appropriate. A device should not be inspected or handled in view of the public unless for an operational purpose.

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

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

Hist.: CD 3-1995, f. & cert. ef. 1-19-95; DOC 14-1998, f. & cert. ef. 6-18-98; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0190

Off-Duty Situations

(1) Off-duty employees who observe a crime in progress or a fugitive should immediately contact the local law enforcement agency and allow the law enforcement agency to resolve the situation.

(2) Employees shall avoid using department issued equipment or role status to intervene in use of force situations when off duty; however, the Department of Corrections recognizes employees have citizen arrest powers and the right to intervene in crimes in progress.

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

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

Hist.: CD 3-1995, f. & cert. ef. 1-19-95; DOC 14-1998, f. & cert. ef. 6-18-98, Renumbered from 291-013-0115; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0195

Protective Body Armor

(1) An employee shall wear department-issued body armor whenever the employee is armed, when accompanied by another employee that is armed, or when the employee has a chemical agent spray in the community.

(2) The functional unit manager shall approve any exception to the wearing of body armor.

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

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

Hist.: CD 3-1995, f. & cert. ef. 1-19-95; DOC 14-1998, f. & cert. ef. 6-18-98; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0205

Chemical Agents

(1) Authorization to carry a chemical agent shall be authorized by the functional unit manager if a chemical agent is authorized.

(2) Authorization to carry department-issued chemical agents shall be limited to the performance of official duties.

(3) Employees authorized to carry a chemical agent shall carry the chemical agent whenever:

(a) Protective body armor is worn;

(b) A firearm is carried;

(c) An arrest is anticipated or when making an arrest; or

(d) A confrontation with vicious dogs or other dangerous animals is anticipated.

(4) An employee shall only discharge a chemical agent for the following:

(a) To defend himself/herself or another person from an animal attack.

(b) To defend himself/herself or another person from imminent danger.

(c) To enforce a valid order(s) to an inmate to submit to the application of restraints.

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

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

Hist.: CD 3-1995, f. & cert. ef. 1-19-95; DOC 14-1998, f. & cert. ef. 6-18-98; DOC 15-2004, f. & cert. ef. 11-2-04

291-013-0206

Electronic Immobilizing Devices

(1) Authorized electronic immobilizing devices authorized by the department include hand held devices, electronic shield, and electronic restraint belt.

(2) Use of the electronic restraint belt for court appearances or transportation will be approved by the functional unit manager or designee.

(3) As soon as possible following each use of an electronic immobilizing device the inmate shall be afforded medical examination and treatment.

(4) Electronic immobilizing devices will not be used in conjunction with chemical agents.

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

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

Hist.: DOC 15-2004, f. & cert. ef. 11-2-04

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291-013-0215

Lethal Force

(1) Employees shall consider every reasonable means of control before resorting to the use of lethal force.

(2) Use of Lethal Force During Transporting of Inmates: An employee may use lethal force when transporting an inmate(s) to the extent that an employee reasonably believes it necessary to:

(a) Prevent imminent serious bodily injury or death to the employee or another person.

(b) Prevent the escape of an inmate classified as medium custody or higher, of if the inmate is classified as minimum custody and is being transported with another inmate(s) who has been classified as medium custody or higher.

(3) Use of Lethal Force When Supervising Minimum Custody Inmates Engaged in Work Crews or Other Approved Activities in the Community: Supervisors of minimum custody inmates engaged in work crews or other authorized activities in the community are not authorized to use lethal force to prevent an escape. Lethal force may be used to prevent imminent serious bodily injury or death to the supervisor or another person.

(4) Prior to resorting to the use of lethal force against an inmate or other person, if feasible, the employee shall give a verbal warning from the imminent use of lethal force.

(5) A warning shot will not be used in the community before the use of lethal force. Other practical warning methods will be used, if time and circumstances permit, before using lethal force.

(6) Firearms will not be fired at or from a moving vehicle or airborne craft, except in self defense or defense of another from the imminent use of lethal force.

(7) Firearms will not be used if innocent people are in the line of fire.

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

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

Hist.: CD 3-1995, f. & cert. ef. 1-19-95; DOC 14-1998, f. & cert. ef. 6-18-98; DOC 3-

2004(Temp), f. & cert. ef. 1-27-04 thru 7-25-04; Administrative correction 8-19-04; DOC 15-

2004, f. & cert. ef. 11-2-04

291-013-0225

Notifications

(1) Whenever force is used, a detailed written report shall be prepared. The Unusual Incident Report (CD 115) will be used as the primary document to report all use of force situations.

(2) All employees witnessing or directly involved in a use of force incident shall individually prepare and submit a written memorandum describing their involvement and observation regarding the incident. The memorandum will be attached to the Unusual Incident Report.

(3) A Use of Force — Preliminary Review Summary (CD 1346) will accompany the Unusual Incident Report.

(4) Supervisory notification and authorization will be obtained prior to a planned use of force. The involved employee shall notify the appropriate supervisor as soon as possible following a reactive use of force. The functional unit manager or designee will be notified immediately following any use of force incident.

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

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

Hist.: CD 3-1995, f. & cert. ef. 1-19-95; DOC 14-1998, f. & cert. ef. 6-18-98; DOC 15-2004,

f. & cert. ef. 11-2-04

291-013-0235

Reviews

In addition to the requirements of OAR 291-013-0140, use of force reviews shall be required as follows:

(1) A preliminary review is required whenever an employee unholsters a firearm, but does not point the firearm at an individual.

(2) A full review is required whenever an employee unholsters a firearm and points the firearm at an individual.

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

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

Hist.: CD 3-1995, f. & cert. ef. 1-19-95; DOC 14-1998, f. & cert. ef. 6-18-98; DOC 15-2004,

f. & cert. ef. 11-2-04

Department of Fish and Wildlife

Chapter 635

Adm. Order No.: DFW 106-2004(Temp)

Filed with Sec. of State: 10-18-2004

Certified to be Effective: 10-18-04 thru 4-15-05

Notice Publication Date:

Rules Amended: 635-056-0040

Subject: Amend rules to allow controlled species to be used for education purposes.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-056-0040

Requirements for Importation and Possession of Live Wildlife

For species, subspecies or hybrids listed as Prohibited or those species not yet classified, a permit will not be issued allowing the importation and possession of live wildlife, except to American Zoo and Aquarium Associations (AZA) accredited facilities, colleges, universities and those facilities which can demonstrate compliance with standards as provided in OAR 635-056-0050(2). For species, subspecies or hybrids listed as Prohibited, Controlled or those species not yet classified, a permit will not be issued allowing the importation and possession of live wildlife for education purposes, except to American Zoo and Aquarium Associations (AZA) accredited facilities, colleges, universities and those facilities which can demonstrate compliance with standards as provided in OAR 635-056-0050(2). For species, subspecies or hybrids listed as Controlled, an importation permit may be required as set forth by the commission. For species, subspecies or hybrids listed as Noncontrolled, no ODFW importation permit is required.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242

Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242

Hist.: FWC 69-1996, f. & cert. ef. 12-20-96; FWC 72-1997, f. & cert. ef. 12-29-97; DFW 94-1999, f. & cert. ef. 12-23-99; DFW 106-2004(Temp), f. & cert. ef. 10-18-04 thru 4-15-05

Adm. Order No.: DFW 107-2004(Temp)

Filed with Sec. of State: 10-18-2004

Certified to be Effective: 10-18-04 thru 11-27-04

Notice Publication Date:

Rules Amended: 635-060-0009, 635-060-0023, 635-060-0046, 635-070-0000, 635-070-0012

Subject: Amend open season dates for Hunt 222A - Upper North Umpqua due to an error in the 2004 Oregon Big Game Regulations and lack of notification to successful hunters.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-060-0009

Successful Applicants

Successful controlled hunt applicants must purchase the controlled hunt tag or permit for the hunt in which they were successful from a department license agent connected to the computerized licensing system within the following dates:

(1) Spring black bear controlled hunts tag sales begin February 20, each year and end at 11:00 p.m. the day before the season start date.

(2) Pronghorn antelope, bighorn sheep, Rocky Mountain goat, deer and elk controlled hunts tag sales begin June 20 each year and end at 11:00 p.m. the day before the season start date for which the tag is valid.

(3) Notwithstanding (2) above, the tag sale deadline for Hunt 248A2-Hepner No. 2 is 11:00 pm November 5, 2004. The tag sale deadline for Hunt 222A — Upper North Umpqua is 11:00 pm November 19, 2004.

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

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

Hist.: FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94;

FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 44-

1996(Temp), f. & cert. ef. 8-12-96, cert. ef. 8-14-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997,

f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 6-1999(Temp), f. & cert.

ef. 2-9-99 thru 2-19-99; DFW 12-1999(Temp), f. & cert. ef. 2-25-99 thru 6-30-99;

Administrative correction 11-17-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 4-

2002(Temp), f. & cert. ef. 1-3-02 thru 2-1-02; DFW 108-2002(Temp), f. & cert. ef. 9-26-02

thru 12-31-02; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; DFW 107-

2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04

635-060-0023

Modified Preference Point System

(1) The Modified Preference Point System separates the tags for each controlled game mammal hunt into two groups:

(a) Seventy-five percent of the tags will be issued through the preference point system;

(b) The remaining 25 percent of the tags will be issued by the equal-probability computer drawing.

(2) Applicants shall accrue no more than one preference point per hunt number series per year.

(a) Valid applicants who did not receive controlled hunt tags for their first choice hunt number in the 100, 200, 400, 600, 700 or 800 series hunts during the controlled hunt drawing shall receive one preference point appli-

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cable to subsequent controlled hunt drawings for the respective hunt number series, except as excluded in OAR 635-060-0008(4).

(b) In 2004, applicants who were successful in drawing Hunt 248A2 — Heppner No. 2 or Hunt 222A — Upper North Umpqua for their first hunt choice will have their 200 series preference points reinstated and will be awarded a 200 series preference point.

(3) A preference point will automatically accrue within each controlled hunt series when an applicant's first choice is as follows:

- (a) Hunt number 199: controlled buck deer
- (b) Hunt number 299: controlled elk
- (c) hunt number 499: controlled pronghorn antelope
- (d) Hunt number 699: controlled antlerless deer
- (e) Hunt number 799: controlled black bear
- (f) Hunt number 899: controlled additional deer

(4) The Modified Preference Point System will group controlled hunt applicants by the number of preference points they have accrued for each hunt number series. Applicants with the highest number of preference points for each hunt number will be drawn first. Applicants having the next highest number of preference points per hunt number will be drawn next. This tag issuance process will continue through descending numbers of preference points until 75 percent of the tags authorized for the hunt have been issued, unless all qualified applicants with preference points have been issued tags prior to that point. Any tags remaining following the issuance of preference point tags will be issued through the equal-probability computer drawing. Applicants unsuccessful in the preference point tag issuance procedure and those applicants without preference points will be placed in the equal-probability computer drawing for the remaining tags.

(5) Applicants successful in drawing their first choice hunt except numbers ending in 99 within a hunt number series shall have zero preference points when they next apply for a tag in that hunt number series.

(6) Applicants will forfeit preference points accumulated for a hunt number series when they do not apply for that hunt number series for two consecutive years.

(7) Party applicant preference points shall be determined by totaling the preference points of all party members and then calculating the average of this total. Party preference points will be rounded up from $x.51$ (e.g. 3.51 to 4, 3.50 to 3) to the next whole number.

(8) Department records are final to determine accrued preference points for controlled hunt applicants.

(9) Each applicant's preference point accrual record will be linked to his or her permanent identification number. Preference point applicants shall use the permanent identification number each time they apply for a controlled hunt tag. Failure to do so shall place the applicant in the equal-probability drawing for his or her hunt number series and preference points will not be accrued together.

(10) Applicants will receive no preference points when:

(a) Their application is not received by the appropriate application date;

(b) They request their controlled hunt application be withdrawn prior to the controlled hunt drawing;

(c) The controlled hunt application has been falsified.

(11) The Modified Preference Point System shall apply to 100, 200, 400, 600, 700, and 800 series hunts.

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

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

Hist.: FWC 6-1994, f. & cert. ef. 1-26-94; FWC 13-1994(Temp), f. & cert. ef. 3-1-94; FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04

635-060-0046

Lost Tags and Tag Exchanges

(1) A fee of \$5.00 and a \$1.50 license agent fee is charged to replace or exchange a tag or permit. Duplicates and exchanges may be obtained only through the Salem headquarters, regional offices of the department, and designated district offices. Hunt 248A2 — Heppner No. 2 and Hunt 222A — Upper North Umpqua tag holders can exchange their controlled hunt tag for a general season tag before the opening date of the general season at no charge. Exception: Replacement controlled hunt tags or permits will be issued at no charge only through the Salem headquarters or regional office of the department if the department determines that the person never received the original controlled tag or permit mailed from the Salem headquarters office.

(2) A Controlled Buck Deer Tag or Controlled Elk Tag may be exchanged for a general season tag before the opening date of the season for which either tag is valid.

(3) No controlled hunt tag shall be exchanged for another controlled hunt tag, except as described in 635-060-0008(5) and 635-075-0015(3).

(4) A Controlled Antlerless Deer Tag shall not be exchanged.

(5) In the event of the death of a successful controlled hunt applicant before the start of the season for which the tag or permit was issued, the tags of the deceased may be issued to a family member as defined by OAR 635-075-0001. Tag or permit transfer shall require a copy of the death certificate and the original controlled hunt tag or permit, and must be requested by the legal heir to the deceased which shall be presumed by possession of the tag or permit and death certificate.

(6) A "leftover" controlled hunt tag may only be exchanged for a general season tag, but only if the person does not already possess a tag authorized by OAR 635-065-0015(4)(a), (b) or (c) or 635-0065-0015(5)(a), (b), (c), (d), (e), (f), (g), or (h).

(7) In situations involving national security emergency, the Commission shall accommodate individuals who lose hunting opportunities because of being called to service in the national interest:

(a) The Commission shall (as specified in paragraph (b)) accommodate the following individuals called to service because of national emergency: regular members of the United States Armed Forces (Army, Navy, Air Force, Marines, Coast Guard), members of the United States military reserves, and members of the National Guard.

(b) The Commission authorizes the Director to make such accommodation by:

(A) Allowing an individual to hunt during the same hunt period for the same species in a later year for bighorn sheep, Rocky Mountain goat, and pronghorn antelope; or

(B) Refunding general or controlled season tag fees and reinstating preference points existing for a series, plus an additional point for participating in the drawing. (Original tag must be returned to ODFW and no refund is available for the hunting license).

(c) Individuals seeking accommodation pursuant to this rule (or immediate family members acting on their behalf) must make a request in writing or in person to the Wildlife Division headquarters office within one year of loss of hunting opportunity. Each request must include a copy of military orders documenting service dates or date of service status change. Each request must include proof of tag draw success and tag purchase.

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

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

Hist.: FWC 118, f. & cert. ef. 6-3-77; FWC 32-1978, f. & cert. ef. 6-30-78; FWC 29-1979, f. & cert. ef. 8-2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 7-1981, f. 2-18-81, ef. 6-1-81; FWC 10-1981, f. & cert. ef. 3-31-81; FWC 22-1981, f. & cert. ef. 6-29-81; FWC 21-1982, f. & cert. ef. 3-31-82; FWC 38-1982, f. & cert. ef. 6-25-82; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 11-1987, f. & cert. ef. 3-6-87; FWC 40-1987, f. & cert. ef. 7-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 55-1992(Temp), f. 7-22-92, cert. ef. 7-24-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 9-1997, f. & cert. ef. 2-27-97; 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 52-2001(Temp), f. & cert. ef. 6-27-01 thru 12-24-01; DFW 13-2002, f. & cert. ef. 2-12-02; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 36-2002(Temp), f. & cert. ef. 4-22-02 thru 10-19-02; DFW 50-2002(Temp), f. & cert. ef. 5-16-02 thru 11-12-02; DFW 29-2003(Temp), f. & cert. ef. 4-9-03 thru 10-1-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04

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. Notwithstanding this, the **2004 Oregon Big Game Regulations** are amended to further amend the open season dates for Hunt 222A — Upper North Umpqua on page 76. The amended dates can be found under OAR 635-071-0012.

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

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[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; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04

635-070-0012

Controlled Cascade Elk Rifle Hunts

Hunt 222A — Hunt Name: Upper North Umpqua

(1) Bag Limit: one antlerless elk.

(2) Open Season: November 13 through 19, 2004 and November 20 through 26, 2004.

(3) Hunt Area: 80% public lands. That part of Unit 21 in Umpqua River drainage and that part of Unit 22 in North Umpqua River drainage.

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

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

Hist.: FWC 44-1987, f. & cert. ef. 7-6-87; FWC 41-1988, f. & cert. ef. 6-13-88; FWC 68-1989, f. & cert. ef. 8-15-89; FWC 60-1990, f. & cert. ef. 6-21-90; FWC 63-1991, f. & cert. ef. 6-24-91; FWC 48-1992, f. & cert. ef. 7-15-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 6-1995, f. 1-23-95, cert. ef. 4-1-95; FWC 54-1995, f. & cert. ef. 6-20-95; 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; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04

Adm. Order No.: DFW 108-2004(Temp)

Filed with Sec. of State: 10-18-2004

Certified to be Effective: 10-18-04 thru 12-31-04

Notice Publication Date:

Rules Amended: 635-014-0090

Rules Suspended: 635-014-0090(T)

Subject: Amend rules related to steelhead angling on the North Fork Alsea River in the Northwest Zone.

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) Siltcoos Lake and Tahkenitch Lake is open to angling for coho salmon effective October 1, 2004 through December 31, 2004. The daily bag limit is one adult coho salmon and one jack coho salmon. The annual limit, in aggregate from both lakes, is five adult coho.

(a) The waters of Siltcoos Lake is defined as that area upstream from the Highway 101 Bridge and downstream of the railroad trestle on the Maple Creek arm and the Fivemile Road crossing on the Fiddle Creek arm.

(b) The waters of Tahkenitch Lake is defined as that area upstream from the Highway 101 Bridge and downstream from Fivemile Road bridge on the Leitel Creek arm and ODFW Marker at Snare Point on the Fivemile Creek arm.

(3) The North Fork Alsea River is open to angling for adipose fin-clipped steelhead from December 1, 2004 through December 31, 2004, from the mouth upstream to 100 feet below the Alsea Hatchery fishway and from 100 feet above the Alsea Hatchery fishway upstream 600 feet to an angling deadline marker.

(4) 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 11-01-01; 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; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04

Adm. Order No.: DFW 109-2004(Temp)

Filed with Sec. of State: 10-19-2004

Certified to be Effective: 10-19-04 thru 12-31-04

Notice Publication Date:

Rules Amended: 635-042-0060, 635-042-0145, 635-042-0160, 635-042-0170, 635-042-0180, 635-042-0190

Rules Suspended: 635-042-0060(T), 635-042-0145(T), 635-042-0160(T), 635-042-0170(T), 635-042-0180(T), 635-042-0190(T)

Subject: Amend rules to extend the late fall salmon non-Treaty commercial seasons in the mainstem Columbia River and increase allowable harvest of sturgeon during the calendar week in the mainstem, Youngs Bay and other open Select Area fisheries. Implementation is consistent with action taken October 19, 2004, by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0060

Late Fall Salmon Season

(1) Salmon and sturgeon may be taken by gill nets for commercial purposes from the Columbia River in the following areas and during the open fishing periods as identified.

(2) In Zones 1-3, from the mouth upstream to Warrior Rock, the open fishing period is 7:00 a.m. to 7:00 p.m., September 27, 2004, and September 29, 2004. Elokomin-A, Abernathy, Cowlitz, Kalama-A, and Lewis-A river sanctuaries are in effect. Gear is restricted to unslacked floater gill nets with a 6-inch maximum mesh size or gill nets with a 9-inch minimum mesh size to a 9-3/4-inch maximum mesh size.

(3) In Zones 1-3, from the mouth upstream to Warrior Rock, the open fishing period is 7:00 a.m., September 30, 2004 to 7:00 a.m., October 1, 2004. Elokomin-A, Abernathy, Cowlitz, Kalama-A, and Lewis-A river sanctuaries are in effect. Gear is restricted to a 9-3/4-inch maximum mesh size. There is no minimum mesh size.

(4) In Zones 4-5, from Warrior Rock upstream to Beacon Rock, the open fishing period is 8:00 p.m., September 27, 2004 to 1:00 a.m., September 28, 2004 and from 8:00 p.m., September 29, 2004 to 7:00 a.m., October 1, 2004. Lewis-A, Sandy and Washougal river sanctuaries are in effect. Gear is restricted to gill nets with an 8-inch minimum mesh size and a 9 3/4-inch maximum mesh size.

(5) In Zones 1-5, from the mouth upstream to Beacon Rock, the open fishing period is 7:00 a.m., October 4, 2004 to 7:00 a.m., October 5, 2004; 7:00 a.m., October 7, 2004 to 7:00 a.m., October 8, 2004; 7:00 a.m., October 11, 2004 to 7:00 a.m., October 12, 2004; 7:00 a.m., October 14, 2004 to 7:00 a.m., October 15, 2004; 7:00 a.m., October 18, 2004 to 7:00 a.m., October 19, 2004; and 7:00 a.m., October 20, 2004 to 7:00 a.m., October 22, 2004. Gear is restricted to a 9-3/4-inch maximum mesh size. There is no minimum mesh size.

(a) During the fishing period October 4, 2004 through October 15, 2004, Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(b) During the fishing period October 18, 2004 through October 22, 2004 Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(6) In Zones 2-5, from a line between Harrington Point on the Washington shore to Settler Point on the Oregon shore upstream to Beacon Rock, the open fishing period is 7:00 a.m., October 25, 2004 to 7:00 a.m., October 26, 2004 and 7:00 a.m., October 27, 2004 to 7:00 a.m., October 29, 2004. Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuar-

ADMINISTRATIVE RULES

ies are in effect. Gear is restricted to a 9-3/4-inch maximum mesh size. There is no minimum mesh size.

(7) A maximum of ten white or green sturgeon in the aggregate may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified above, the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fisheries and other open Select Area fisheries.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 40-1979, f. & ef. 9-10-79; FWC 45-1979(Temp), f. & ef. 9-21-79; FWC 52-1979(Temp), f. & ef. 11-2-79; FWC 48-1980(Temp), f. & ef. 9-19-80; FWC 51-1980(Temp), f. & ef. 9-22-80; FWC 55-1980(Temp), f. & ef. 9-26-80; FWC 56-1980(Temp), f. & ef. 9-29-80; FWC 58-1980(Temp), f. & ef. 10-17-80; FWC 37-1981(Temp), f. & ef. 9-24-81; FWC 38-1981(Temp), f. & ef. 9-29-81; FWC 69-1982(Temp), f. & ef. 9-30-82; FWC 72-1982(Temp), f. & ef. 10-20-82; FWC 56-1983(Temp), f. & ef. 10-5-83; FWC 54-1984(Temp), f. & ef. 9-10-84; FWC 59-1984(Temp), f. & ef. 9-18-84; FWC 66-1984(Temp), f. & ef. 9-26-84; FWC 68-1984(Temp), f. & ef. 10-2-84; FWC 58-1985(Temp), f. & ef. 9-13-85; FWC 62-1985(Temp), f. & ef. 9-24-85; FWC 66-1985(Temp), f. & ef. 10-11-85; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 64-1986(Temp), f. & ef. 10-3-86; FWC 67-1986(Temp), f. & ef. 10-17-86; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987(Temp), f. & ef. 9-11-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 91-1987(Temp), f. & ef. 10-16-87; FWC 85-1988(Temp), f. & cert. ef. 9-9-88; FWC 93-1988(Temp), f. & cert. ef. 9-16-88; FWC 99-1988(Temp), f. & cert. ef. 10-7-88; FWC 100-1988(Temp), f. & cert. ef. 10-21-88; FWC 94-1989(Temp), f. & cert. ef. 9-15-89; FWC 9-17-89; FWC 97-1989(Temp), f. & cert. ef. 9-21-89; FWC 109-1989(Temp), f. & cert. ef. 10-6-89; FWC 113-1989(Temp), f. & cert. ef. 11-9-89; FWC 100-1990(Temp), f. & cert. ef. 9-18-90; FWC 101-1990(Temp), f. & cert. ef. 9-19-90; FWC 102-1990(Temp), f. & cert. ef. 9-20-90; FWC 114-1990, f. & cert. ef. 10-8-90; FWC 105-1991, f. & cert. ef. 9-20-91; FWC 118-1991, f. & cert. ef. 10-4-91; FWC 122-1991(Temp), f. & cert. ef. 10-18-91; FWC 129-1991(Temp), f. & cert. ef. 11-1-91; FWC 97-1992(Temp), f. & cert. ef. 9-22-92; FWC 100-1992(Temp), f. & cert. ef. 9-25-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 109-1992(Temp), f. & cert. ef. 10-19-92; FWC 110-1992(Temp), f. & cert. ef. 10-22-92; FWC 80-1995(Temp), f. & cert. ef. 9-27-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 58-1996(Temp), f. & cert. ef. 9-30-96; FWC 60-1996(Temp), f. & cert. ef. 10-7-96; FWC 62(Temp), f. & cert. ef. 10-18-96; FWC 61-1997(Temp), f. & cert. ef. 9-24-97; FWC 62-1997(Temp), f. & cert. ef. 10-6-97; FWC 64-1997(Temp), f. & cert. ef. 10-14-97; FWC 65-1997(Temp), f. & cert. ef. 10-20-97; FWC 68-1997(Temp), f. & cert. ef. 11-3-97; FWC 79-1999(Temp), f. & cert. ef. 10-11-99 thru 12-31-99; FWC 83-1999(Temp), f. & cert. ef. 10-27-99 thru 12-31-99; FWC 87-1999(Temp), f. & cert. ef. 11-4-99 thru 11-5-99; Administrative correction 11-17-99; DFW 62-2000(Temp), f. & cert. ef. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; DFW 68-2000(Temp), f. & cert. ef. 10-9-00 thru 12-31-00; DFW 71-2000(Temp), f. & cert. ef. 10-23-00 thru 12-31-00; DFW 74-2000(Temp), f. & cert. ef. 10-27-00, cert. ef. 10-30-00 thru 12-31-00; Administrative correction 6-20-01; DFW 89-2001(Temp), 9-14-01 thru 12-31-01; DFW 92-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 93-2001(Temp), f. & cert. ef. 9-21-01, cert. ef. 9-24-01 thru 12-31-01; DFW 98-2001(Temp), f. & cert. ef. 10-8-01, cert. ef. 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 106(Temp), f. & cert. ef. 9-24-02 thru 12-31-02; DFW 109-2002(Temp), f. & cert. ef. 9-27-02 thru 12-31-02; DFW 112-2002(Temp), f. & cert. ef. 10-10-02, cert. ef. 10-14-02 thru 12-31-02; DFW 122-2002(Temp), f. & cert. ef. 10-28-02 thru 12-31-02; DFW 92-2003(Temp), f. & cert. ef. 9-12-03 cert. ef. 9-15-03 thru 12-31-03; DFW 95-2003(Temp), f. & cert. ef. 9-17-03 thru 12-31-03; DFW 98-2003(Temp), f. & cert. ef. 9-22-03, cert. ef. 9-23-03 thru 12-31-03; DFW 105-2003(Temp), f. & cert. ef. 10-10-03, cert. ef. 10-12-03 thru 12-31-03; DFW 107-2003(Temp), f. & cert. ef. 10-21-03, cert. ef. 10-26-03 thru 12-31-03; DFW 95-2004(Temp), f. & cert. ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 98-2004(Temp), f. & cert. ef. 9-22-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 101-2004(Temp), f. & cert. ef. 9-29-04 thru 12-31-04; DFW 102-2004(Temp), f. & cert. ef. 10-1-04, cert. ef. 10-4-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04

635-042-0145

Youngs Bay Salmon Season

(1) Salmon, sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(a) In the fishing period of March 20 to March 21, 2004, and on April 12, 2004, salmon, sturgeon, and shad may be taken for commercial purposes only in those waters of Youngs Bay extending upstream of the old Highway 101 Bridge (old Youngs Bay Bridge) to the upper boundary at the confluence of the Youngs and Klaskanine rivers.

(b) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (A), the spring fishery, paragraph (B), and summer fishery, paragraph (C), as follows:

(A) Winter Season:

6 p.m. February 14 – 12 Noon February 15, 2004;
6 a.m. to 6 p.m. February 18, 2004;
6 p.m. February 21 – 12 Noon February 22, 2004;
6 a.m. to 6 p.m. February 25, 2004;
6 p.m. February 28 – 12 Noon February 29, 2004;
6 a.m. to 6 p.m. March 3, 2004;
6 p.m. March 6 – 12 Noon March 7, 2004;
6 p.m. March 13 – 12 Noon March 14, 2004;
6 p.m. March 20 – 6 a.m. March 21, 2004;
8 p.m. to 12 Midnight April 12, 2004.

(B) Spring Season:

6 p.m. April 22 – 6 a.m. April 23, 2004;
6 p.m. April 26 – 6 a.m. April 27, 2004;
6 p.m. April 29 – 6 a.m. April 30, 2004;

6 p.m. May 3 – 12 Noon May 4, 2004;
6 p.m. May 6 – 12 Noon May 7, 2004;
12 Noon May 11 – 12 Noon May 14, 2004;
12 Noon May 17 – 12 Noon May 21, 2004;
12 Noon May 24 – 12 Noon May 28, 2004;
12 Noon May 31 – 12 Noon June 4, 2004;
12 Noon June 7 – 12 Noon June 11, 2004;
12 Noon June 15 – 12 Noon June 18, 2004;

(C) Summer Season:

12 Noon June 23 – 12 Noon June 25, 2004;
12 Noon June 30 – 12 Noon July 2, 2004;
12 Noon July 7 – 6 p.m. July 8, 2004;
12 Noon July 14 – 6 p.m. July 15, 2004;
12 Noon July 21 – 6 p.m. July 22, 2004;
12 Noon July 28 – 6 p.m. July 29, 2004;

(b) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Monofilament gillnets are allowed. It is unlawful to use a gill net having a mesh size that is less than 7-1/4 inches during February 14, 2004 to March 21, 2004 and during the April 12, 2004 fishing period. It is unlawful to use a gill net having a mesh size that is more than 8 inches April 22, 2004 to June 18, 2004 and June 23, 2004 to July 29, 2004.

(c) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period between February 14, 2004 and March 21, 2004.

(2) Effective Thursday, 12:01 AM, May 6, 2004, the fishing area as described in (1) is closed to the harvest of salmon, steelhead and shad until further notice.

(3) Effective May 20, 2004, salmon, sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(a) The open fishing periods are established as follows:

7 p.m. May 20 – 7 a.m. May 21, 2004;
7 p.m. May 24 – 7 a.m. May 25, 2004;
7 p.m. May 27 – 7 a.m. May 28, 2004;
12 Noon May 31 – 12 Noon June 4, 2004;
12 Noon June 7 – 12 Noon June 11, 2004;
12 Noon June 15 – 12 Noon June 18, 2004;

(b) Summer Season:

12 Noon June 23 – 12 Noon June 25, 2004;
12 Noon June 30 – 12 Noon July 2, 2004;
12 Noon July 7 – 6 p.m. July 8, 2004;
12 Noon July 14 – 6 p.m. July 15, 2004;
12 Noon July 21 – 6 p.m. July 22, 2004;
12 Noon July 28 – 6 p.m. July 29, 2004;

(c) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Monofilament gillnets are allowed. It is unlawful to use a gill net having a mesh size that is more than 8 inches May 20, 2004 to June 18, 2004 and June 23, 2004 to July 29, 2004.

(4) Salmon and sturgeon may be taken for commercial purposes in those waters of Youngs Bay from the new Highway 101 Bridge upstream to the upper boundary at Battle Creek Slough, except for those waters which are closed south of the alternate Highway 101 Bridge (Lewis and Clark River).

(a) Open fishing periods are:

6 a.m. August 4, 2004 to 12 noon August 5, 2004;
6 a.m. August 11, 2004 to 12 noon August 12, 2004;
6 a.m. August 18, 2004 to 12 noon August 19, 2004;
6 a.m. August 25, 2004 to 12 noon August 26, 2004;
6 a.m. August 31, 2004 to 6 a.m. September 3, 2004; and
12 noon September 7, 2004 to 12 noon October 31, 2004.

(b) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight on the leadline may not exceed two pounds per any fathom. Gear is restricted to 8-inch maximum mesh from August 4, 2004 through August 26, 2004. Gear is restricted to 6-inch maximum mesh size from August 31, 2004 through October 31, 2004.

(5) A maximum of ten white or green sturgeon in the aggregate may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified above, the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fisheries and other open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. & cert. ef. 8-20-89; FWC 82-1990(Temp), f. & cert. ef. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. & cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-

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92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. & cert. ef. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the early spring fishery in paragraphs (1)(a)(A) or (1)(a)(B) of this rule in those waters of Blind Slough. Blind Slough is those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge. In addition, Knappa Slough is open to fishing for salmon, sturgeon and shad during open fishing periods described as the spring fishery in paragraph (1)(a)(B) of this rule. Knappa Slough is all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A), and the spring fishery in paragraph (B). The seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough Only:

February 14 – February 15, 2004;
February 21 – February 22, 2004;
February 28 – February 29, 2004;
March 6 – March 7, 2004;
March 13 – March 14, 2004;
March 20 – March 21, 2004 and April 12, 2004.

(B) Blind and Knappa Sloughs:

April 22 – April 23, 2004;
April 29 – April 30, 2004;
May 3 – May 4, 2004;
May 6 – May 7, 2004;
May 10 – May 11, 2004;
May 13 – May 14, 2004;
May 17 – May 18, 2004;
May 20 – May 21, 2004;
May 24 – May 25, 2004;
May 27 – May 28, 2004;
May 31 – June 1, 2004;
June 3 – June 4, 2004;
June 7 – June 8, 2004;
June 10 – June 11, 2004;
June 14 – June 15, 2004; and
June 17 – June 18, 2004.

(b) During the April 12, 2004 winter fishery, as identified in (1)(a)(A), the open fishing period is restricted to 8:00 p.m. to 12 Midnight (4 hours).

(c) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period between February 14, 2004 and March 21, 2004.

(d) Gear restrictions are as follows:

(A) During the winter fishery (see paragraph (1)(a)(A) of this rule) gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is less than 7-1/4 inches;

(B) During the spring fishery (see paragraphs (1)(a)(B) of this rule) gill nets may not exceed 100 fathoms in length with no weight limit on the

lead line. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is more than 8 inches.

(2) Effective Thursday, 12:01 AM, May 6, 2004, the fishing areas as described in (1) is closed to the harvest of salmon, steelhead and shad until further notice.

(3) Effective May 20, 2004, salmon, sturgeon, and shad may be taken for commercial purposes during open fishing periods described in those waters of Blind Slough and Knappa Slough.

(a) Blind Slough is those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge.

(b) Knappa Slough is all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

(4) The open fishing periods for those areas as described in 635-042-0160(3)(a)(b) are nightly from 7:00 PM until 7:00 AM the following morning (12 hours), as follows: May 20 – May 21, 2004; May 24 – May 25, 2004; May 27 – May 28, 2004; May 31 – June 1, 2004; June 3 – June 4, 2004; June 7 – June 8, 2004; June 10 – June 11, 2004; June 14 – June 15, 2004; and June 17 – June 18, 2004.

(5) Gear is restricted to gill nets not exceeding 100 fathoms in length with no weight limit on the lead line. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is more than 8 inches.

(6) Salmon and sturgeon may be taken for commercial purposes in those waters of Blind Slough and Knappa Slough. The Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately one-half mile upstream of the county road bridge downstream to markers at the mouth of Blind Slough. Knappa Slough includes all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to boundary lines defined by markers on the western end of Minaker Island to markers on Karlson Island and the Oregon shore. The area encompassing a 100 foot radius at the mouth of Big Creek remains closed.

(a) Open fishing periods are:

7 p.m. August 24, 2004 to 7 a.m. August 27, 2004;
7 p.m. August 31, 2004 to 7 a.m. September 1, 2004;
7 p.m. September 1, 2004 to 7 a.m. September 2, 2004;
7 p.m. September 2, 2004 to 7 a.m. September 3, 2004;
7 p.m. September 7, 2004 to 7 a.m. September 8, 2004;
7 p.m. September 8, 2004 to 7 a.m. September 9, 2004;
7 p.m. September 9, 2004 to 7 a.m. September 10, 2004;
4 p.m. September 13, 2004 to 8 a.m. September 14, 2004;
4 p.m. September 14, 2004 to 8 a.m. September 15, 2004;
4 p.m. September 15, 2004 to 8 a.m. September 16, 2004;
4 p.m. September 16, 2004 to 8 a.m. September 17, 2004;
7 p.m. September 20, 2004 to 7 a.m. September 21, 2004;
7 p.m. September 21, 2004 to 7 a.m. September 22, 2004;
7 p.m. September 22, 2004 to 7 a.m. September 23, 2004;
7 p.m. September 23, 2004 to 7 a.m. September 24, 2004;
6 p.m. September 27, 2004 to 8 a.m. September 28, 2004;
6 p.m. September 28, 2004 to 8 a.m. September 29, 2004;
6 p.m. September 29, 2004 to 8 a.m. September 30, 2004;
6 p.m. September 30, 2004 to 8 a.m. October 1, 2004;
6 p.m. October 4, 2004 to 8 a.m. October 5, 2004;
6 p.m. October 5, 2004 to 8 a.m. October 6, 2004;
6 p.m. October 6, 2004 to 8 a.m. October 7, 2004;
6 p.m. October 7, 2004 to 8 a.m. October 8, 2004;
6 p.m. October 11, 2004 to 8 a.m. October 12, 2004;
6 p.m. October 12, 2004 to 8 a.m. October 13, 2004;
6 p.m. October 13, 2004 to 8 a.m. October 14, 2004;
6 p.m. October 14, 2004 to 8 a.m. October 15, 2004;
6 p.m. October 18, 2004 to 8 a.m. October 19, 2004;
6 p.m. October 19, 2004 to 8 a.m. October 20, 2004;
6 p.m. October 20, 2004 to 8 a.m. October 21, 2004;
6 p.m. October 21, 2004 to 8 a.m. October 22, 2004;
6 p.m. October 25, 2004 to 8 a.m. October 26, 2004;
6 p.m. October 26, 2004 to 8 a.m. October 27, 2004;
6 p.m. October 27, 2004 to 8 a.m. October 28, 2004; and
6 p.m. October 28, 2004 to 8 a.m. October 29, 2004.

(b) Effective September 20, 2004 through October 29, 2004, gear is restricted to gill nets with a 6-inch maximum mesh size. Nets may not exceed 100 fathoms in length. The attachment of additional weights and anchors directly to the leadline is allowed.

(7) A maximum of ten white or green sturgeon in the aggregate may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified above, the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fisheries and other open Select Area fisheries.

(8) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

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Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04

635-042-0170

Tongue Point Basin and South Channel Select Area Salmon Season

(1) Salmon and sturgeon may be taken for commercial purposes in those waters of Tongue Point and South Channel. Tongue Point includes all waters bounded by a line from a yellow marker midway between the red light at Tongue Point and the downstream (northern most) pier (#8) to the flashing green light at the rock jetty on the northwesterly tip of Mott Island, a line from a marker at the south end of Mott Island easterly to a marker on the northwest bank on Lois Island and a line from a marker on the southwest end of Lois Island due westerly to a marker on the opposite bank. South Channel includes all waters bounded by a line from a marker on John Day Point through the green buoy "7" thence to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red marker "10" thence northwesterly to a marker on the sand bar defining the terminus of South Channel.

(a) Open fishing periods are:

7 p.m. August 31, 2004 to 7 a.m. September 1, 2004;
7 p.m. September 1, 2004 to 7 a.m. September 2, 2004;
7 p.m. September 2, 2004 to 7 a.m. September 3, 2004;
7 p.m. September 7, 2004 to 7 a.m. September 8, 2004;
7 p.m. September 8, 2004 to 7 a.m. September 9, 2004;
7 p.m. September 9, 2004 to 7 a.m. September 10, 2004;
4 p.m. September 13, 2004 to 8 a.m. September 14, 2004;
4 p.m. September 14, 2004 to 8 a.m. September 15, 2004;
4 p.m. September 15, 2004 to 8 a.m. September 16, 2004;
4 p.m. September 16, 2004 to 8 a.m. September 17, 2004;
4 p.m. September 20, 2004 to 8 a.m. September 21, 2004;
4 p.m. September 21, 2004 to 8 a.m. September 22, 2004;
4 p.m. September 22, 2004 to 8 a.m. September 23, 2004;
4 p.m. September 23, 2004 to 8 a.m. September 24, 2004;
4 p.m. September 27, 2004 to 8 a.m. September 28, 2004;
4 p.m. September 28, 2004 to 8 a.m. September 29, 2004;
4 p.m. September 29, 2004 to 8 a.m. September 30, 2004;
4 p.m. September 30, 2004 to 8 a.m. October 1, 2004;
4 p.m. October 4, 2004 to 8 a.m. October 5, 2004;
4 p.m. October 5, 2004 to 8 a.m. October 6, 2004;
4 p.m. October 6, 2004 to 8 a.m. October 7, 2004;
4 p.m. October 7, 2004 to 8 a.m. October 8, 2004;
4 p.m. October 11, 2004 to 8 a.m. October 12, 2004;
4 p.m. October 12, 2004 to 8 a.m. October 13, 2004;
4 p.m. October 13, 2004 to 8 a.m. October 14, 2004;
4 p.m. October 14, 2004 to 8 a.m. October 15, 2004;
4 p.m. October 18, 2004 to 8 a.m. October 19, 2004;
4 p.m. October 19, 2004 to 8 a.m. October 20, 2004;
4 p.m. October 20, 2004 to 8 a.m. October 21, 2004;
4 p.m. October 21, 2004 to 8 a.m. October 22, 2004;
4 p.m. October 25, 2004 to 8 a.m. October 26, 2004;
4 p.m. October 26, 2004 to 8 a.m. October 27, 2004;
4 p.m. October 27, 2004 to 8 a.m. October 28, 2004; and
4 p.m. October 28, 2004 to 8 a.m. October 29, 2004;

(b) In Tongue Point gear is restricted to 6-inch maximum mesh size.

Nets may not exceed 250 fathoms in length and weight on the leadline may not exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may store gill nets on their boat with leadlines in excess of two pounds per fathom.

(c) Effective September 20, 2004, in the South Channel gear is restricted to gill nets with a 6-inch maximum mesh size. Nets may not exceed 100 fathoms in length. The attachment of additional weights and anchors directly to the leadline is allowed.

(2) A maximum of ten white or green sturgeon in the aggregate may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified above, the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fisheries and other open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 41-1998(Temp), f. 5-28-98, cert. ef. 5-29-98; DFW 42-1998(Temp), f. 5-29-98, cert. ef. 5-31-98 thru 6-6-98; DFW 45-1998(Temp), f. 6-5-98, cert. ef. 6-6-98 thru 6-10-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998, f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative Correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon, shad, and sturgeon may be taken for commercial purposes from Highway 4 Bridge, downstream to the Deep River boat ramp.

(2) The fishing seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

April 22 – April, 23, 2004;
April 29 – April 30, 2004;
May 3 – May 4, 2004;
May 6 – May 7, 2004;
May 10 – May 11, 2004;
May 13 – May 14, 2004;
May 17 – May 18, 2004;
May 20 – May 21, 2004;
May 24 – May 25, 2004;
May 27 – May 28, 2004;
May 31 – June 1, 2004;
June 3 – June 4, 2004;
June 7 – June 8, 2004;
June 10 – June 11, 2004;
June 14 – June 15, 2004; and
June 17 – June 18, 2004.

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is more than 8 inches.

(4) Effective Thursday, 12:01 AM, May 6, 2004, the fishing area as described in (1) is closed to the harvest of salmon, steelhead and shad until further notice.

(5) Effective May 20, 2004, salmon, shad, and sturgeon may be taken for commercial purposes from Highway 4 Bridge, downstream to the Deep River boat ramp. The fishing seasons are again open nightly, 7:00 PM to 7:00 AM the following morning (12 hours), as follows:

May 20 – May 21, 2004;
May 24 – May 25, 2004;
May 27 – May 28, 2004;
May 31 – June 1, 2004;
June 3 – June 4, 2004;
June 7 – June 8, 2004;
June 10 – June 11, 2004;
June 14 – June 15, 2004; and
June 17 – June 18, 2004.

(6) Gear restrictions as defined in 635-042-0180(3) remain in effect.

(7) Salmon and sturgeon may be taken for commercial purposes in those waters of Deep River; all waters downriver from the town of Deep River to the mouth (a line from navigation marker "16" southwest to a marker on the Washington shore).

(a) Open fishing periods are:

7 p.m. August 23, 2004 to 7 a.m. August 24, 2004;
7 p.m. August 24, 2004 to 7 a.m. August 25, 2004;
7 p.m. August 25, 2004 to 7 a.m. August 26, 2004;
7 p.m. August 26, 2004 to 7 a.m. August 27, 2004;
7 p.m. August 30, 2004 to 7 a.m. August 31, 2004;
7 p.m. August 31, 2004 to 7 a.m. September 1, 2004;
7 p.m. September 1, 2004 to 7 a.m. September 2, 2004;
7 p.m. September 2, 2004 to 7 a.m. September 3, 2004;
7 p.m. September 6, 2004 to 7 a.m. September 7, 2004;
7 p.m. September 7, 2004 to 7 a.m. September 8, 2004;
7 p.m. September 8, 2004 to 7 a.m. September 9, 2004;
7 p.m. September 9, 2004 to 7 a.m. September 10, 2004;
4 p.m. September 13, 2004 to 8 a.m. September 14, 2004;
4 p.m. September 14, 2004 to 8 a.m. September 15, 2004;
4 p.m. September 15, 2004 to 8 a.m. September 16, 2004;
4 p.m. September 16, 2004 to 8 a.m. September 17, 2004;
4 p.m. September 20, 2004 to 8 a.m. September 21, 2004;
4 p.m. September 21, 2004 to 8 a.m. September 22, 2004;
4 p.m. September 22, 2004 to 8 a.m. September 23, 2004;
4 p.m. September 23, 2004 to 8 a.m. September 24, 2004;
4 p.m. September 27, 2004 to 8 a.m. September 28, 2004;
4 p.m. September 28, 2004 to 8 a.m. September 29, 2004;
4 p.m. September 29, 2004 to 8 a.m. September 30, 2004;
4 p.m. September 30, 2004 to 8 a.m. October 1, 2004;
4 p.m. October 4, 2004 to 8 a.m. October 5, 2004;
4 p.m. October 5, 2004 to 8 a.m. October 6, 2004;

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4 p.m. October 6, 2004 to 8 a.m. October 7, 2004;
4 p.m. October 7, 2004 to 8 a.m. October 8, 2004;
4 p.m. October 11, 2004 to 8 a.m. October 12, 2004;
4 p.m. October 12, 2004 to 8 a.m. October 13, 2004;
4 p.m. October 13, 2004 to 8 a.m. October 14, 2004;
4 p.m. October 14, 2004 to 8 a.m. October 15, 2004;
4 p.m. October 18, 2004 to 8 a.m. October 19, 2004;
4 p.m. October 19, 2004 to 8 a.m. October 20, 2004;
4 p.m. October 20, 2004 to 8 a.m. October 21, 2004;
4 p.m. October 21, 2004 to 8 a.m. October 22, 2004;
4 p.m. October 25, 2004 to 8 a.m. October 26, 2004;
4 p.m. October 26, 2004 to 8 a.m. October 27, 2004;
4 p.m. October 27, 2004 to 8 a.m. October 28, 2004; and
4 p.m. October 28, 2004 to 8 a.m. October 29, 2004;

(b) Effective September 20, 2004 through October 29, 2004, gear is restricted to gill nets with a 6-inch maximum mesh size. Nets may not exceed 100 fathoms in length. The attachment of additional weights and anchors directly to the leadline is allowed.

(8) A maximum of ten white or green sturgeon in the aggregate may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified above, the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fisheries and other open Select Area fisheries.

Stat. Auth.: ORS 506.109, 506.109, 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. & cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. & cert. ef. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. & cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. & cert. ef. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. & cert. ef. 8-2-04, cert. ef. 12-31-04; DFW 95-2004(Temp), f. & cert. ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04

635-042-0190 Steamboat Slough

(1) Salmon and sturgeon may be taken for commercial purposes in those waters of Steamboat Slough. The fishing area includes all waters bounded by markers on Price Island and the Washington shore at both ends of Steamboat Slough.

(a) Open fishing periods are:

7 p.m. August 31, 2004 to 7 a.m. September 1, 2004;
7 p.m. September 1, 2004 to 7 a.m. September 2, 2004;
7 p.m. September 2, 2004 to 7 a.m. September 3, 2004;
7 p.m. September 7, 2004 to 7 a.m. September 8, 2004;
7 p.m. September 8, 2004 to 7 a.m. September 9, 2004;
7 p.m. September 9, 2004 to 7 a.m. September 10, 2004;
4 p.m. September 13, 2004 to 8 a.m. September 14, 2004;
4 p.m. September 14, 2004 to 8 a.m. September 15, 2004;
4 p.m. September 15, 2004 to 8 a.m. September 16, 2004;
4 p.m. September 16, 2004 to 8 a.m. September 17, 2004;
4 p.m. September 20, 2004 to 8 a.m. September 21, 2004;
4 p.m. September 21, 2004 to 8 a.m. September 22, 2004;
4 p.m. September 22, 2004 to 8 a.m. September 23, 2004;
4 p.m. September 23, 2004 to 8 a.m. September 24, 2004;
4 p.m. September 27, 2004 to 8 a.m. September 28, 2004;
4 p.m. September 28, 2004 to 8 a.m. September 29, 2004;
4 p.m. September 29, 2004 to 8 a.m. September 30, 2004;
4 p.m. September 30, 2004 to 8 a.m. October 1, 2004;
4 p.m. October 4, 2004 to 8 a.m. October 5, 2004;
4 p.m. October 5, 2004 to 8 a.m. October 6, 2004;
4 p.m. October 6, 2004 to 8 a.m. October 7, 2004;
4 p.m. October 7, 2004 to 8 a.m. October 8, 2004;
4 p.m. October 11, 2004 to 8 a.m. October 12, 2004;
4 p.m. October 12, 2004 to 8 a.m. October 13, 2004;
4 p.m. October 13, 2004 to 8 a.m. October 14, 2004;
4 p.m. October 14, 2004 to 8 a.m. October 15, 2004;
4 p.m. October 18, 2004 to 8 a.m. October 19, 2004;
4 p.m. October 19, 2004 to 8 a.m. October 20, 2004;
4 p.m. October 20, 2004 to 8 a.m. October 21, 2004;
4 p.m. October 21, 2004 to 8 a.m. October 22, 2004;
4 p.m. October 25, 2004 to 8 a.m. October 26, 2004;
4 p.m. October 26, 2004 to 8 a.m. October 27, 2004;
4 p.m. October 27, 2004 to 8 a.m. October 28, 2004; and
4 p.m. October 28, 2004 to 8 a.m. October 29, 2004;

(b) Effective September 20, 2004 through October 29, 2004, gear is restricted to gill nets with a 6-inch maximum mesh size. Nets may not exceed 100 fathoms in length. The attachment of additional weights and anchors directly to the leadline is allowed.

(2) A maximum of ten white or green sturgeon in the aggregate may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods as identified in 1(a), the weekly aggregate sturgeon limit applies to pos-

session and sales in the Columbia River mainstem fishery, the Youngs Bay fisheries and other open Select Area fisheries.

Stat. Auth.: ORS 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. ef. 9-9-03 thru 12-31-03; Administrative correction 7-30-04; DFW 79-2004(Temp), f. & cert. ef. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. & cert. ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04

Adm. Order No.: DFW 110-2004(Temp)

Filed with Sec. of State: 10-29-2004

Certified to be Effective: 10-29-04 thru 12-31-04

Notice Publication Date:

Rules Amended: 635-041-0075

Rules Suspended: 635-041-0075(T)

Subject: Amend rule to close the Treaty Indian commercial fall salmon fishery within Zone 6. Implementation is consistent with action taken October 29, 2004, by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-041-0075

Fall Salmon Season

(1) Commercial sale of chinook salmon, coho salmon, steelhead, walleye, carp, and shad from mainstem Columbia River waters in all of Zone 6 is prohibited effective 6:00 p.m. October 30, 2004. Platform and hook-and-line caught fish may be retained for subsistence purposes through the end of the year.

(2) There is no mesh size restriction at this time.

(3) All standard dam and river mouth sanctuaries set forth in OAR 635-041-0045 are in effect, except Small Spring Creek sanctuary within a radius of 150 feet of the Spring Creek Hatchery ladder.

(4) Sturgeon may not be sold. However, sturgeon between 4–5 feet in length in The Dalles and John Day Pools and sturgeon between 45”–60” in the Bonneville Pool may be kept for subsistence purposes.

(5) Until further notice, sales of platform and hook-and-line caught fall chinook salmon and coho salmon from the Klickitat River will be allowed beginning November 2, 2004, only during those days and hours lawfully enacted by the Yakama Nation.

Stat. Auth.: ORS 496.118 & 506.119
Stats. Implemented: ORS 506.109, 506.129 & 507.030
Hist.: FWC 25-1979, f. & cert. ef. 8-2-79; FWC 36-1979(Temp), f. & cert. ef. 8-22-79; FWC 47-1979(Temp), f. & cert. ef. 9-21-79; FWC 44-1980(Temp), f. & cert. ef. 8-22-80; FWC 46-1980(Temp), f. & cert. ef. 9-13-80; FWC 33-1981(Temp), f. & cert. ef. 9-15-81; FWC 58-1982(Temp), f. & cert. ef. 8-27-82; FWC 62-1982(Temp), f. & cert. ef. 9-7-82; FWC 63-1982(Temp), f. & cert. ef. 9-14-82; FWC 75-1982 (Temp), f. & cert. ef. 10-29-82; FWC 36-1983, f. & cert. ef. 8-18-83; FWC 49-1983(Temp), f. & cert. ef. 9-26-83; FWC 51-1983(Temp), f. & cert. ef. 9-30-83; FWC 55-1983(Temp), f. & cert. ef. 10-4-83; FWC 46-1984, f. & cert. ef. 8-30-84; FWC 55-1984(Temp), f. & cert. ef. 9-10-84; FWC 58-1984(Temp), f. & cert. ef. 9-17-84; FWC 61-1984 (Temp), f. & cert. ef. 9-21-84; FWC 70-1984(Temp), f. & cert. ef. 10-9-84; FWC 47-1985, f. & cert. ef. 8-23-85; FWC 60-1985(Temp), f. & cert. ef. 9-13-85; FWC 63-1985(Temp), f. & cert. ef. 9-24-85; FWC 42-1986, f. & cert. ef. 8-15-86; FWC 53-1986(Temp), f. & cert. ef. 9-4-86; FWC 54-1986(Temp), f. & cert. ef. 9-5-86; FWC 57-1986(Temp), f. & cert. ef. 9-11-86; FWC 60-1986(Temp), f. & cert. ef. 9-26-86; FWC 62-1986(Temp), f. & cert. ef. 10-2-86; FWC 63-1987, f. & cert. ef. 8-7-87; FWC 74-1987(Temp), f. & cert. ef. 9-4-87; FWC 75-1987 (Temp), f. & cert. ef. 9-1-87; FWC 78-1987(Temp), f. & cert. ef. 9-15-87; FWC 80-1987(Temp), f. & cert. ef. 9-18-87; FWC 87-1987(Temp), f. & cert. ef. 10-9-87; FWC 89-1987(Temp), f. & cert. ef. 10-12-87; FWC 67-1988, f. & cert. ef. 8-15-88; FWC 72-1988(Temp), f. & cert. ef. 8-19-88; FWC 77-1988(Temp), f. & cert. ef. 9-2-88; FWC 91-1988(Temp), f. & cert. ef. 9-16-88; FWC 95-1988 (Temp), f. & cert. ef. 9-27-88, cert. ef. 9-28-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 96-1989(Temp), f. & cert. ef. 9-1-89; FWC 95-1989(Temp), f. & cert. ef. 9-19-89; FWC 98-1989 (Temp), f. & cert. ef. 9-21-89; FWC 99-1989(Temp), f. & cert. ef. 9-27-89; FWC 100-1989(Temp), f. & cert. ef. 9-28-89; FWC 80-1990(Temp), f. & cert. ef. 8-7-90, cert. ef. 8-8-90; FWC 90-1990, f. & cert. ef. 8-31-90; FWC 96-1990(Temp), f. & cert. ef. 9-7-90, cert. ef. 9-10-90; FWC 98-1990(Temp), f. & cert. ef. 9-14-90, cert. ef. 9-17-90; FWC 85-1991, f. & cert. ef. 8-7-91, cert. ef. 8-12-91; FWC 96-1991, f. & cert. ef. 9-9-91; FWC 101-1991(Temp), f. & cert. ef. 9-10-91; FWC 103-1991 (Temp), f. & cert. ef. 9-18-91; FWC 110-1991(Temp), f. & cert. ef. 9-27-91; FWC 73-1992(Temp), f. & cert. ef. 8-10-92; FWC 86-1992(Temp), f. & cert. ef. 9-1-92, cert. ef. 9-2-92; FWC 87-1992(Temp), f. & cert. ef. 9-7-92; FWC 91-1992(Temp), f. & cert. ef. 9-16-92, cert. ef. 9-17-92; FWC 96-1992(Temp), f. & cert. ef. 9-22-92, cert. ef. 9-23-92; FWC 105-1992(Temp), f. & cert. ef. 10-2-92, cert. ef. 10-5-92; FWC 107-1992 (Temp), f. & cert. ef. 10-9-92; FWC 47-1993, f. & cert. ef. 8-6-93, cert. ef. 8-9-93; FWC 52-1993, f. & cert. ef. 8-30-93; FWC 57-1993(Temp), f. & cert. ef. 9-13-93; FWC 59-1993(Temp), f. & cert. ef. 9-17-93, cert. ef. 9-20-93; FWC 61-1993(Temp), f. & cert. ef. 9-24-93; FWC 55-1994(Temp), f. & cert. ef. 8-26-94, cert. ef. 8-29-94; FWC 61-1994(Temp), f. & cert. ef. 9-7-94, cert. ef. 9-8-94; FWC 74-1994(Temp), f. & cert. ef. 10-12-94; FWC 68-1995(Temp), f. & cert. ef. 8-25-95, cert. ef. 8-29-95; FWC 72-1995(Temp), f. & cert. ef. 9-1-95; FWC 75-1995(Temp), f. & cert. ef. 9-13-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1996(Temp), f. & cert. ef. 8-29-96, cert. ef. 9-2-96; FWC 51-1996(Temp), f. & cert. ef. 9-6-96, cert. ef. 9-9-96; FWC 53-1996(Temp), f. & cert. ef. 9-26-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 52-1997(Temp), f. & cert. ef. 8-29-97, cert. ef. 9-2-97; FWC 57(Temp), f. & cert. ef. 9-9-97; FWC 60-1997(Temp), f. & cert. ef. 9-16-97, cert. ef. 9-17-97; DFW 68-1998(T), f. & cert. ef. 8-25-98 thru 9-25-98; DFW 76-1998(T), f. & cert. ef. 9-8-98 thru 9-25-98; DFW 77-1998(Temp), f. & cert. ef. 9-14-98, cert. ef. 9-15-98 thru 9-25-98; DFW 79-1998(Temp), f. & cert. ef. 9-21-98, cert. ef. 9-22-98 thru 9-25-98; DFW 80-1998(Temp), f. & cert. ef. 9-23-98,

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cert. ef. 9-24-98 thru 9-25-98; DFW 59-1999(Temp), f. & cert. ef. 8-23-99 thru 9-11-99; DFW 62-1999(Temp), f. 9-2-99, cert. ef. 9-3-99 thru 9-11-99; DFW 65-1999(Temp), f. 9-14-99, cert. ef. 9-15-99 thru 9-17-99; DFW 69-1999(Temp), f. & cert. ef. 9-17-99 thru 9-18-99; DFW 72-1999(Temp), f. 9-21-99, cert. ef. 9-22-99 thru 10-22-99; DFW 74-1999(Temp), f. 9-28-99, cert. ef. 9-29-99 thru 10-22-99; Administrative correction 11-17-99; DFW 50-2000, f. 8-18-00, cert. ef. 8-21-00 thru 9-9-00; DFW 60-2000(Temp), f. 9-11-00, cert. ef. 9-12-00 thru 12-31-00; DFW 61-2000(Temp), f. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; Administrative correction 6-19-01; DFW 75-2001(Temp), f. & cert. ef. 8-20-01 thru 9-8-01; DFW 87-2001(Temp), f. 9-10-01, cert. ef. 9-11-01 thru 9-15-01; DFW 91-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 94-2001(Temp), f. 9-26-01, cert. ef. 9-27-01 thru 12-31-01; DFW 100-2001(Temp), f. 10-16-01, cert. ef. 10-17-01 thru 12-31-01; DFW 89-2002(Temp), f. 8-16-02, cert. ef. 8-18-02 thru 12-31-02; DFW 98-2002(Temp), f. & cert. ef. 8-30-02 thru 12-31-02; DFW 102-2002(Temp), f. & cert. ef. 9-13-02 thru 12-31-02; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 113-2002(Temp), f. 10-14-02, cert. ef. 10-15-02 thru 12-31-02; DFW 77-2003(Temp), f. & cert. ef. 8-13-03 thru 12-31-03; DFW 81-2003(Temp), f. 8-25-03, cert. ef. 8-26-03 thru 12-31-03; DFW 91-2003(Temp), f. 9-12-03 cert. ef. 9-16-03 thru 12-31-03; DFW 97-2003(Temp), f. 9-22-03, cert. ef. 9-24-03 thru 12-31-03; DFW 101-2003(Temp), f. 9-26-03, cert. ef. 10-1-03 thru 12-31-03; DFW 103-2003(Temp), f. 10-3-03, cert. ef. 10-8-03 thru 12-31-03; DFW 104-2003(Temp), f. 10-10-03, cert. ef. 10-11-03 thru 12-31-03; DFW 88-2004(Temp), f. & cert. ef. 8-23-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 104-2004(Temp), f. 10-12-04 cert. ef. 10-13-04 thru 12-31-04; DFW 110-2004(Temp), f. & cert. ef. 10-29-04 thru 12-31-04

Department of Human Services, Child Welfare Programs Chapter 413

Adm. Order No.: CWP 17-2004

Filed with Sec. of State: 11-1-2004

Certified to be Effective: 11-1-04

Notice Publication Date: 8-1-04

Rules Adopted: 413-015-0511, 413-015-0512, 413-015-0513, 413-015-0514

Rules Amended: 413-015-0110, 413-015-0115, 413-015-0400, 413-015-0405, 413-015-0500, 413-015-0505, 413-015-0510

Subject: The purpose of changing these Child Protective Service rules is to increase consistency in the methods used to assess child safety in different offices across the state. Specifically, the primary change is the creation of specific procedures for completing initial safety assessments, initial safety plans, the review of safety plans, response to a new safety threat on an existing case and the use of Team Decision Meetings. Also, key terms in these procedures were defined. The only other change outlines the parameters and the process when a CPS assessment on an assigned referral is not necessary. These rules were originally intended to include deletions to the impending response category, but that portion of the rule will be effective at a later date.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0110

Introduction to Rules Governing Child Protective Services

The rules of this division are organized as follows:

- (1) Introduction to Child Protective Services, OAR 413-015-0100 through 0125;
- (2) Screening, OAR 413-015-0200 through 0225;
- (3) Cross Reporting, OAR 413-015-0300 through 0310;
- (4) Child Protective Services Assessment, OAR 413-015-0400 through 0410;
- (5) Safety Assessment and Safety Planning, OAR 413-015-0500 through 0514;
- (6) Working with Other Entities, 413-015-0600 through 0615;
- (7) Interviewing, 413-015-0700 through 0740;
- (8) Photographing and Documenting, 413-015-0800;
- (9) Medical Examination, 413-015-0900 through 0905;
- (10) Child Abuse Assessment Dispositions, 413-015-1000.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 17-2004, f. & cert. ef. 11-1-04

413-015-0115

Definitions

Unless the context indicates otherwise, these terms are defined for use in OAR chapter 413, division 015:

(1) "Caregiver" is a guardian, legal custodian, or other person acting in loco parentis, who exercises significant authority over and responsibility for a child.

(2) "Child" means a person under 18 years of age.

(3) "Child abuse" means any form of abuse, including abuse through neglect and abuse or neglect by a third party, of a person under age 18.

(4) "Child protective services (CPS)" means a specialized social service program that the Department provides on behalf of children who are abused or who are at substantial risk of child abuse by a parent or caregiver.

(5) "Child protective services assessment" means activities and interventions that evaluate potential safety threats, risk influences, and caregiver protective capacity and determine whether or not child abuse has occurred. Activities include development of a safety plan and identification of services.

(6) "Child protective services supervisor (CPS supervisor)" means an employee of the Department trained in child protective services and designated as a supervisor.

(7) "Child protective services worker (CPS worker)" means an employee of the Department who has completed the mandatory department training for child protective service workers.

(8) "Critical case junctures" are events in family development or case work practice that may increase or otherwise affect the risk to a child's safety, permanency, or well-being.

(9) "Department" means the Department of Human Services Child Welfare Program.

(10) "Department response" means how the Department intends to respond to a report of child abuse after a report of alleged abuse is screened.

(11) "FACIS" means the Family and Child Information System.

(12) "Family Decision Meeting (FDM)" means a family focused intervention facilitated by professional staff that is designed to build and strengthen family supports and the natural care-giving systems for the children. Family decision meetings may include family group conferences, family unity meetings, family mediation, or other professionally recognized interventions that include extended family and rely upon the family to make decisions about planning for its children. The purpose of the family decision meeting is to establish a plan that may include a permanency plan, concurrent permanency plan, placement recommendation, or service recommendation and agreements, which provide for the safety, attachment, and permanency needs of the child. Family decision meetings emphasize the family's unique plans for its children. The family members collaborate, rather than just participate in the meeting. It is also essential that the professionals in the meeting have direct involvement with the child and the family and are not just members of a committee.

(13) "Guided Assessment Process (GAP)" is a tool used to determine the presence of a safety threat that requires consideration of risk influences and parent or caregiver protective capacity.

(14) "Harm" means impairment, damage, detriment, or injury to a child's physical, sexual, emotional, or mental development or functioning.

(15) "ICWA" means the Indian Child Welfare Act.

(16) "Immediate safety threat" means behavior, conditions, or circumstances that are presently beyond the parent's or caregiver's current ability to manage and are likely to result in harm to a child.

(17) "Impending safety threat" means behavior, conditions, or circumstances that are not presently beyond the parent's or caregiver's current ability to manage but are likely to become so within the near future and are likely to result in harm to a child.

(18) "Multi-disciplinary team (MDT)" is a county investigative team, described in ORS 418.747, that includes law enforcement personnel, child protective service workers, district attorneys, school officials, health department staff, and juvenile department personnel.

(19) "Protective capacity" means a parent's or caregiver's strengths or abilities to manage existing safety threats, prevent additional safety threats from arising, or stop risk influences from creating a safety threat.

(20) "Protective custody" means custody authorized by ORS 419B.150.

(21) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(22) "Report" means information provided to the Department that constitutes an allegation of child abuse.

(23) "Risk influences" means those circumstances and situations that contribute to the severity of identified safety threats and that are considered by the CPS worker when a safety plan is developed.

(24) "Safe" means there is an absence of safety threats or there is sufficient protective capacity to manage the existing safety threats.

(25) "Safety assessment" means actions or interventions, which include face-to-face contact with the child and parent, or caregiver, to determine whether a child is safe.

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(26) "Safety plan" means a documented set of actions or interventions that describe how a child's safety is achieved by eliminating or managing a safety threat.

(27) "Safety threat" means behavior, conditions, or circumstances that are likely to result in harm to a child.

(28) " Screener" means a department employee with training required to provide screening services.

(29) "Screening" means the process used by a screener to determine the Department's response when information alleging abuse is received.

(30) "Substantial harm" means immobilizing impairment, life threatening damage, or significant or acute injury to a child's physical, sexual, psychological, or mental development or functioning.

(31) "Team Decision Meeting (TDM)" means a facilitated meeting with family, extended family, community members, service providers, and child welfare staff held for the purpose of making child placement related decisions.

(32) "Third-party abuse" means abuse by a person who is not the child's parent, not the child's caregiver or other member of the child's household, and not a person responsible for the child's care, custody, and control. Examples of persons who could be considered as a third-party under this definition include school personnel, day-care providers, coaches, and church personnel.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04

413-015-0400

Purpose of CPS Assessment and Time Lines

(1) OAR 413-015-0400 to 413-015-0410 describe and establish time lines for completing a CPS assessment.

(2) The time line for the Child Protective Services response begins when the call is received at screening.

(3) A CPS worker in consultation with a CPS supervisor or designee may determine within the response time that an assigned referral does not require a CPS assessment if:

(a) The referral was opened in error; or

(b) The CPS worker has, through collateral contacts, determined that there is no safety threat.

(4) To complete the CPS assessment, the CPS worker assesses the referral of child abuse to determine whether child abuse has occurred; evaluates potential safety threats, the severity of risk of harm, and parental or caregiver capacity to protect; develops services to assure the child's safety; and provides support to the family.

(5) The CPS worker must complete the CPS assessment, including FACIS input and electronic transmission for review, within 30 days of the day that the information alleging child abuse is received by the screener. The CPS supervisor may approve a one-time extension of an additional 30 days for completion of the CPS assessment if critical information is outstanding. Additional extension of time may be approved by the child welfare program manager if the ability to obtain critical information is beyond the reasonable control of the CPS worker.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04

413-015-0405

CPS Assessment

The following actions are usually taken to assess a child's safety, to establish a child safety plan, and to complete the CPS assessment. The steps do not occur in a prescribed order but are controlled by the specific circumstances in a given case. The steps are described in a logical order in these rules, but they are not necessarily in the order they must be completed.

(1) Consult with CPS supervisor. Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at key points during the assessment, such as:

(a) Before making initial contact with the family;

(b) Prior to a decision to place a child in protective custody;

(c) When a referral indicates potential danger to the worker;

(d) When a referral involves allegations that child abuse occurred in a licensed child caring agency;

(e) When a referral involves a foster care home certified by the Department;

(f) When making dispositions in complicated or sensitive situations or cases;

(g) Prior to initiating court action; and

(h) Prior to a decision to close a case during or at the end of the CPS assessment.

(2) Review relevant records. The CPS worker must review relevant paper and electronic records maintained by the Department for historical information on the family and the child that may be useful in completing the assessment. The CPS worker must review the documents to identify information related to:

(a) Safety threats and risk influences;

(b) Worker safety;

(c) Child and family support systems and protective capacity; and

(d) History of or a pattern of abuse.

(3) Contact the reporter. The CPS worker must contact the reporter or other collateral sources for additional information if the referral does not contain adequate information to proceed with the assessment.

(4) Contact and work with other entities. The CPS worker must contact other entities including LEAs, public and private schools, tribes, and multi-disciplinary teams (MDTs) as necessary to complete the CPS assessment. The requirements for making these contacts are further described in "Working with Other Entities," OAR 413-015-0600 through 0615.

(5) Determine ICWA Status. The CPS worker must initiate the process to determine the child's ICWA status and notify the tribe if applicable:

(a) Complete a form CF 1270, "Verification of ICWA Eligibility," to assist in determining ICWA eligibility.

(b) Contact the child's tribe when an Indian child is the subject of a CPS assessment. Oregon Tribes must be notified within 24 hours after information alleging abuse is received by the Department. Consult with the ICWA manager to determine whether there is reasonable cause to believe that the child is ICWA eligible.

(c) If the Indian child is enrolled or eligible for enrollment in an Oregon tribe, notify the child's tribe if the child may be placed in protective custody.

(d) Consult with the local department ICWA liaison or a supervisor if the worker has questions regarding the involvement of a tribe or the ICWA status of a child.

(6) Identify legal parents and putative fathers. The CPS worker or designee must make a reasonable effort to identify legal parents and putative fathers within 30 days after a child is taken into protective custody. Information about putative fathers must be recorded on form CF 418, "Father(s) Questionnaire" and filed in the case record.

(7) Notify Parent or Caregiver of intent to interview. The CPS worker must notify parents of the intent to interview a child, unless notification could compromise the child's safety or a criminal investigation.

(8) Conduct Interview. The CPS worker must interview people, as necessary, to complete the CPS assessment. The requirements for interviewing parents and children are described in OAR 413-015-0700 to 0740.

(9) Conduct safety assessment. The CPS worker must conduct the safety assessment using the GAP within the times lines set out in OAR 413-015-0500 through 0514. The safety assessment time lines are based on the department response determined by the screener during the screening process, described in OAR 413-015-0210(1)(a) through (c).

(10) Develop safety plan. When a safety threat has been identified as a result of the safety assessment, the CPS worker must immediately develop a safety plan with the involvement of the family and tribe, if applicable and practicable. OAR 413-015-0500 through 0514 provide specific time lines and requirements for a safety plan.

(11) Photograph and document. The CPS worker must take photographs, as necessary, to complete the CPS assessment. The requirements for taking photographs are described in OAR 413-015-0800, "Photographs and Documents of Abuse."

(12) Obtain medical examinations. The CPS worker must obtain medical examinations, as necessary, to complete the CPS assessment. The requirements for obtaining medical examinations are described in "Medical Examination and Medical History," OAR 413-015-0900 through 0905.

(13) Provide notice of child placed in protective custody. If a child is placed in protective custody (see OAR 413-015-0410), the CPS worker must notify parents, including a non-custodial parent; caregivers; and the child's tribe, if applicable, in writing.

(14) Record assessment activities. The CPS worker must record assessment activities and information gathered during the assessment process. OAR 413-015-0500 through 0514 provide specific requirements and procedures for making findings and documenting information such as safety threats that have been identified, the capacity of parents or caregivers

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to protect the child, the safety plan components, identity of relatives who are willing to contribute to the safety plan, and cultural considerations.

(15) **Notify reporting party.** The CPS worker must make a concerted effort to contact the person who made the report of suspected child abuse when the Department has made contact with the family and has concluded the CPS assessment.

(16) **Determine disposition of CPS assessment.** The CPS worker must determine a disposition to complete the CPS assessment. The requirements for determining dispositions are described in OAR 413-015-1000, "The CPS Assessment Dispositions."

(17) **Obtain supervisory review.** A CPS supervisor or designee must review and approve a completed CPS assessment within five working days of the electronic submission of the assessment by the CPS worker.

(18) **Enter FACIS data.** Each local department office may designate an individual to enter the CPS supervisor's electronic verification of review and approval into FACIS.

(19) **Notify parents or caregivers of CPS assessment dispositions.** The CPS worker must notify the child's parents, including a non-custodial legal parent, and caregivers of all CPS assessment dispositions (unfounded, unable to determine, or founded). If providing the notice would increase the risk of harm to a child or adult victim, an exception to notification may be made with CPS supervisor approval based on documentation of risk.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04

413-015-0500

Purpose

The purposes of these rules, OAR 413-015-0500 through 0514, are to:

(1) Describe a safety assessment and a safety plan.
(2) Establish when a safety plan must be developed and when it will be reviewed.

(3) Establish when a safety plan is no longer required.

(4) Describe the use of a TDM.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 17-2004, f. & cert. ef. 11-1-04

413-015-0505

Initial Safety Assessments and Time Frames

(1) To complete a safety assessment, the CPS worker must:

(a) Make efforts to contact the child at home, school, day care, or any other place the worker believes the child may be found. If the worker is unsuccessful, the worker must document in the assessment activities section of the GAP all attempts made to contact the child and the dates of those attempted contacts.

(b) Have face-to-face contact with the child who is the subject of the referral.

(c) Have face-to-face contact with the primary parent or caregiver, if possible.

(d) Determine if other children in the home are safe.

(e) Utilize the GAP and interviewing guidelines set out in OAR 413-015-0700 to 413-015-0740 to:

(A) Identify safety threats;

(B) Assess risk influences; and

(C) Assess parents' or caregivers' protective capacity.

(2) Except as provided in section (3) of this rule, after the screener determines the department response and assigns the referral to a CPS worker, the CPS worker must complete a safety assessment within the following time lines:

(a) **Immediate Response:** The CPS worker must complete a safety assessment on the same working day the report alleging child abuse is received by the Department.

(b) **Impending Response:** The CPS worker must make face-to-face contact with the child within 24 hours of the time the report alleging child abuse is received by the Department or document why attempted contacts have been unsuccessful. The CPS worker must complete the safety assessment and safety plan without undue delay.

(c) **Response Required:** The CPS worker must make a face-to-face contact with the child within five days of the day the report alleging child abuse is received by the Department and must complete the safety assessment without undue delay after that face-to-face contact.

(3) Exceptions:

(a) Any exception to the time lines given in section (2) of this rule requires CPS supervisor approval, written justification, and an explanation of how the child's safety needs have been considered.

(b) If the screener has been granted an extension to complete the screening process, the CPS supervisor may adjust the safety assessment and CPS assessment time line accordingly.

(4) Documentation requirements. The CPS worker must document, using the GAP:

(a) The initial safety assessment within five working days following face-to-face contact with a child; and

(b) The initial safety plan within the CPS assessment time frames (*see* OAR 413-015-0400(5)).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04

413-015-0510

Initial Safety Plan

(1) Safety Plan. The CPS worker must develop and document a safety plan when a current safety threat has been identified as a result of a child safety assessment and a case is being opened. If there is adequate protective capacity to mitigate the safety threat, then the documentation occurs in the assessment activities section of the GAP.

(2) The CPS worker must develop the safety plan with family participation whenever possible.

(3) The CPS worker must utilize the GAP to consider safety threats, risk influences, and parent's or caregiver's protective capacity in developing the safety plan.

(4) If the CPS worker knows or has reason to know the case involves an Indian child, the CPS worker must involve the Indian child's tribe when developing the safety plan unless the tribe declines to participate.

(5) The safety plan may contain one or both of the following elements depending on the individual safety needs of children in the family:

(a) An in-home safety plan. An in-home safety plan must be developed when the protective capacity of the parent or caregiver can be enhanced or supported to create safety for the children.

(b) An out-of-home safety plan. An out-of-home safety plan must be developed if reasonable efforts or active efforts (if applicable) have been made to prevent the removal of the child from the home and:

(A) Existing protective capacity of the caregiver cannot be enhanced or supported to provide for the child's safety; or

(B) There is no parent or caregiver to provide for the child's safety needs.

(6) Closing an Initial Safety Plan. The CPS worker will close the initial safety plan when identified safety threats have been resolved or eliminated and the case will not be open beyond completion of the CPS assessment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04

413-015-0511

Review of Safety Plan

(1) The assigned worker will review child safety and the safety plan:

(a) At critical case junctures. The following are examples of, but not a complete list of, critical case junctures:

(A) At completion of the CPS assessment.

(B) Following transfer of the case by the receiving worker.

(C) When the case moves from supervised to unsupervised visitation.

(D) Prior to a placement change.

(E) One week after the child is returned home.

(F) A significant change in family circumstances or constellation, such as a new live-in companion or a new house mate, new baby, change in employment status, divorce, substance abuse relapse, mental health incident, missed medical appointment by the caregiver for a vulnerable baby, or a change in the protective capacity of a parent or caregiver.

(G) Before dismissal of court jurisdiction is recommended.

(H) Prior to closure of the case.

(b) When face-to-face contact occurs between a child welfare worker and a child, including a mandatory 30-day visitation.

(2) Review of child safety and the safety plan (*see* Child Welfare policy "Caseworker Contact with Children, Parents, and Caregivers," policy I-B.1, OAR 413-080-0040 to 413-015-0060) at critical case junctures must include face-to-face contact with the child and custodial caregiver. It also must include contact with other persons as necessary to reassess child safety.

(3) Review of child safety and the safety plan, including changes to the plan must be documented in FACIS case notes.

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(4) In addition to the other requirements of this rule, the safety plan will be discussed:

- (a) When the case is staffed with a supervisor.
- (b) At a high-risk staffing.
- (c) When the case is reviewed by a Citizen Review Board.
- (d) During a juvenile court proceeding.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 17-2004, f. & cert. ef. 11-1-04

413-015-0512

Mandatory Reporting of New Safety Threats

When a new or unaddressed safety threat is reported on an existing child welfare case, the following must occur:

- (1) The child welfare worker who has information that indicates a new or unaddressed safety threat must make a CPS report to a screener.
- (2) The screener will initiate a new referral process and determine an assignment according to OAR 413-015-0200 to 413-015-0225.
- (3) When the referral is assigned for a CPS assessment, the CPS worker must complete a safety assessment in accordance with OAR 413-015-0505, "Initial Safety Assessments and Time Frames," and OAR 413-015-0400 to 413-015-0410.

(4) If a new safety threat is identified, a new safety plan must be developed or the current plan revised in accordance with OAR 413-015-0510, "Initial Safety Plan."

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 17-2004, f. & cert. ef. 11-1-04

413-015-0513

Closing a Safety Plan

(1) The case worker will close the safety plan when a case is being closed and services are no longer being provided or a permanent plan has been established for the safety of the child.

(2) The case worker may close the safety plan when identified safety threats have been eliminated or the parent or caregiver protective capacity can manage identified safety threats.

(3) A family decision meeting will be held to determine whether identified safety threats have been addressed so that the safety plan can be closed. If a family decision meeting is not held as described in this section, supervisory approval and supporting documentation is required.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 17-2004, f. & cert. ef. 11-1-04

413-015-0514

Use of Team Decision Meetings (TDMs)

(1) A TDM is used when making a child placement decision. A TDM must be held:

- (a) When a child is about to be or has been initially placed in substitute care:
 - (A) Prior to placement of the child;
 - (B) Within 24 hours of an emergency placement; or
 - (C) On the next working day after a placement occurs during an evening, holiday, or weekend.
- (b) At reunification, before the child is moved.
- (2) The following requirements apply to the use of TDMs:
 - (a) The case worker retains final responsibility for assessing child safety and approving the safety plan.
 - (b) Each TDM must include a review of the safety plan.
 - (c) If a TDM is not held as described in section (1) of this rule, supervisory approval and supporting documentation is required.
 - (d) Local department offices must develop protocols for scheduling, facilitating, and documenting TDMs.

Stat. Auth.: 418.005
Stats. Implemented: 418.005
Hist.: CWP 17-2004, f. & cert. ef. 11-1-04

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

Adm. Order No.: OMAP 80-2004
Filed with Sec. of State: 10-28-2004
Certified to be Effective: 10-28-04
Notice Publication Date: 7-1-04

Rules Adopted: 410-050-0100, 410-050-0110, 410-050-0120, 410-050-0130, 410-050-0140, 410-050-0150, 410-050-0160, 410-050-0170, 410-050-0180, 410-050-0190, 410-050-0200, 410-050-0210, 410-050-0220, 410-050-0230, 410-050-0240, 410-050-0250
Subject: Oregon Administrative Rules 410-050-0100 through 410-050-0250, the Medicaid Managed Care Provider Tax, establish the taxation of Prepaid Health Plans that contract with the Department of Human Services to provide health care coverage to Oregon Health Plan (OHP) enrollees. The rules implement the tax required in HB 2747.

Rules Coordinator: Pat Bougher—(503) 945-5844

410-050-0100

Definitions

(1) "Deficiency" means the amount by which the tax as correctly computed exceeds the tax, if any, reported by the PHP. If, after the original deficiency has been assessed, subsequent information shows the correct amount of tax to be greater than previously determined, an additional deficiency arises.

(2) "Delinquency" means the PHP failed to file a report when due as required under these rules or to pay the tax as correctly computed when the tax was due.

(3) "Department" means the Oregon Department of Human Services or its successor organization.

(4) "Director" means the Director of the Oregon Department of Human Services or the Director's designee or agent.

(5) "Premium Payments" means all capitation payments received by Prepaid Health Plans (PHPs) on a per enrollee per month basis for the provision of health services specified by contract. Premiums do not include any form of payment by Oregon Health Plan enrollees to the Department.

(6) "Managed Care Premiums" means all Premium Payments paid to a PHP including the Capitation Payments as defined in OAR 410-141-0000(12). Managed Care Premiums do not include Medicare premiums.

(7) "Medicaid Managed Care Organization" (MMCO) means a managed health, dental, mental health or chemical dependency organization that contracts with the Department of Human Services on a prepaid capitated basis under ORS 414.725. A MMCO is also referred to as a Prepaid Health Plan (PHP) as defined in OAR 410-141-0000(88). A PHP may be a dental care organization, fully capitated health plan, physician care organization, mental health organization or chemical dependency organization.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch 736 § 37
Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0110

General Administration

(1) The purpose of these rules is to implement the Medicaid managed care tax on the Prepaid Health Plans in the State of Oregon.

(2) The Department will administer, enforce and collect the Medicaid managed care tax. The Department may assign employees, auditors and such other agents as the Director may designate to assist in the administration, enforcement and collection of the taxes.

(3) The Department may make such rules and regulations, not inconsistent with legislative enactments, that it considers necessary to administer, enforce and collect the taxes.

(4) The Department may adopt such forms and reporting requirements, and change the forms and reporting requirements, as necessary to administer, enforce and collect the taxes.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch 736 § 38; 409.050
Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0120

Disclosure of Information

(1) Except as otherwise specifically required by law, the Department must not publicly divulge or disclose the amount of income, expense, or other particulars set forth or disclosed in any report or return required in the administration of the taxes. "Particulars" includes but is not limited to, social security numbers, employer number or other organization identification number, and any business records required to be submitted to or inspected by the Department or its designee to allow it to determine the amounts of any assessments, delinquencies, or deficiencies payable or paid, or otherwise administer, enforce or collect a health care assessment to the

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extent that such information would be exempt from disclosure under ORS 192.501(5).

(2) The Department may:

(a) Upon request, furnish any PHP, or representative authorized to represent the PHP, with a copy of the PHP's report filed with the Department for any quarter, or with a copy of any other information filed by the PHP in connection with the report, or as the Department considers necessary;

(b) Publish information or statistics so classified as to prevent the identification of income or any particulars contained in any report or return;

(c) Disclose and give access to an officer or employee of the Department or its designee, or to the authorized representatives of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the Controller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice, the Oregon Department of Justice Medicaid Fraud Control Unit, and such other employees of the State or Federal government to the extent the Department deems disclosure or access necessary or appropriate for the performance of official duties in the Department's administration, enforcement or collection of these taxes.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch 736 § 37-51

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0130

The Medicaid Managed Care Tax: Calculation; Report; Due Date; Verification of Report

(1) The tax is assessed on the Managed Care Premiums paid to a PHP on or after January 1, 2004, based on calendar quarters. The first calendar quarter begins on January 1; the second calendar quarter begins on April 1; the third calendar quarter begins on July 1; and the fourth quarter begins on October 1. For purposes of this rule, Managed Care Premiums will be taxed as of the calendar quarter in which the Managed Care Premium payment is received by the PHP.

(2) Adjustments to the Managed Care Premium subject to tax shall be determined as follows:

(a) Managed Care Premiums attributable to periods prior to January 1, 2004 are not subject to the tax and shall be deducted from the taxable Managed Care Premiums when calculating the tax due. Managed Care Premiums attributable to the period between January 1, 2004 and April 31, 2004 are taxed at the rate of 0%. This deduction includes maternity payments, adjustments due to changes in the client's status, and other Managed Care Premium adjustments resulting in additional payments received by the PHP on or after May 1, 2004;

(b) If Managed Care Premiums received after May 1, 2004 are reduced by a recoupment by the Department for an overpayment paid prior to May 1, 2004, then the taxable Managed Care Premiums will be deemed to include the recouped amount;

(c) If both the overpayment and recoupment occur after May 1st, 2004, then the PHP will be subject to the tax on the Managed Care Premiums received in the calendar quarter in which the Managed Care Premium payment is received by the PHP;

(d) Sub-capitation payments made to a PHP by another PHP are not included in the total Managed Care Premiums subject to tax if the payor PHP certifies to the payee PHP in writing that the payor PHP is already responsible for the Managed Care Tax on the originating Managed Care Premiums.

(3) The rate of the assessment on and after May 1, 2004, will be determined in accordance with OAR 410-050-0140.

(4) The tax becomes operative on May 1, 2004. The first calendar quarter for which a tax is due is a partial quarter. First quarter taxes will be due on Managed Care Premiums received between May 1, 2004 and June 30, 2004.

(5) The PHP must pay the tax and file the report on a form approved by the Department on or before the 75th day following the end of the calendar quarter for which a tax is due. The PHP must provide all information required on the report.

(6) Any report, statement or other document required to be filed under any provision of these rules shall be certified by the Chief Financial Officer of the PHP or an individual with delegated authority to sign for the PHP's Chief Financial Officer. The certification must attest, based on best knowledge, information and belief, to the accuracy, completeness and truthfulness of the document.

(7) Payments may be made electronically or by paper check. If the PHP pays electronically, the accompanying report may either be faxed to

the Department at the fax number provided on the report form or mailed to the Department at the address provided on the report form. If the PHP pays by paper check, the accompanying report must be mailed with the check to the address provided on the report form.

(8) The Department may charge the PHP a fee of \$100 if, for any reason, the check, draft, order or electronic funds transfer request is dishonored. This charge is in addition to any penalty for nonpayment of the taxes that may also be due.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch 736 § 38, 39 & 45

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0140

Filing an Amended Report

(1) The claims for refunds or payments of additional tax must be submitted by the PHP on a form approved by the Department. The PHP must provide all information required on the report. The Department may audit the PHP, request additional information or request an informal conference prior to granting a refund or as part of its review of a payment of a Deficiency.

(2) Claim for Refund.

(a) If the amount of the tax imposed by these rules is less than the amount paid by the PHP and the PHP does not then owe a tax for any other calendar period, such overpayment may be refunded by the Department to the PHP. In no event will a refund applicable to a particular calendar quarter exceed the tax amount actually paid by the PHP;

(b) The PHP may file a claim for refund on a form approved by the Department within 180 days after the end of the calendar quarter to which the claim for refund applies;

(c) If there is an amount due from the PHP to the Department for any past due taxes or penalties, any refund otherwise allowable will first be applied to the unpaid taxes and penalties and the PHP so notified.

(3) Payment of Deficiency.

(a) If the amount of the tax imposed by these rules is more than the amount paid by the PHP, the PHP may file a corrected report on a form approved by the Department and pay the Deficiency at any time. The penalty under OAR 410-050-0180 will stop accruing after the Department receives of payment of the total Deficiency for the calendar quarter;

(b) If there is an error in the determination of the tax due, the PHP may describe the circumstances of the late additional payment with the late filing of the amended report. The Department, in its sole discretion, may determine that such a late additional payment does not constitute a failure to file a report or pay an assessment giving rise to the imposition of a penalty. In making this determination, the Department will consider the circumstances, including but not limited to: nature and extent of the error; PHP explanation of the circumstances related to the error; evidence of prior errors; and evidence of prior penalties (including evidence of informal dispositions or settlement agreements). This provision only applies if the PHP has filed a timely original return and paid the assessment identified in the return.

(4) If the Department discovers/identifies information in the administration of these Managed Care tax rules that it determines could give rise to the issuance of a Notice of Proposed Action, or the issuance of a refund, the Department will notify the PHP. The PHP will have 30 calendar days from the date of the Department's notice to respond. It is the PHP's responsibility to determine what response, if any, it will make. The PHP may request a refund pursuant to subsection (2) of this rule or file an amended report pursuant to subsection (3) of this rule. Nothing in this subsection (4) prevents or limits the Department from issuing a Notice of Proposed Action pursuant to OAR 410-050-0190.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch 736 § 38, 40, 41 & 48

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0150

Determining the Date Filed

For the purposes of OAR 410-050-0100 through 410-050-0250, any reports, requests, appeals, payments or other response by the PHP must be received by the Department either

(1) before the close of business on the date due, or

(2) if mailed, postmarked before midnight of the due date. When the due date falls on a Saturday, Sunday or legal holiday, the response is due on the next business day following such Saturday, Sunday or legal holiday.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch 736 § 38

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Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0160

Departmental Authority to Audit Records

(1) The PHP must maintain financial records necessary and adequate to determine the amount of Managed Care Premiums for any calendar period for which a tax may be due.

(2) The Department or its designee may audit the PHP's records at any time for a period of five years following the date the tax is due to verify or determine the Managed Care Premiums for the PHP.

(3) Any audit, finding or position may be reopened if there is evidence of fraud, malfeasance, concealment, misrepresentation of material fact, omission of income, or collusion either by the PHP or by the PHP and a representative of the Department.

(4) The Department may notify the PHP of a potential Deficiency or issue a refund based upon its findings during the audit.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch 736 § 42

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0170

Assessing Tax on Failure to File

(1) The law places an affirmative duty on the PHP to file a timely and correct report.

(2) In the case of a failure by the PHP to file a report or to maintain necessary and adequate records, the Department will determine the tax liability of the PHP according to the best of its information and belief. "Best of its information and belief" means that the Department will use evidence available to the Department at the time of the determination on which a reasonable person would rely in determining the tax. The Department's determination of tax liability will be the basis for the assessment due in any Notice of Proposed Action.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch 736 § 38

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0180

Financial Penalty for Failure to File a Report or Failure to Pay Tax When Due

(1) A PHP that fails to file a report or pay a tax when due under OAR 410-050-0130 is subject to a penalty of \$500 per day of Delinquency. The penalty accrues from the date of Delinquency, notwithstanding the date of any notice under these rules.

(2) The total amount of penalty imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which the penalty is being imposed.

(3) Penalties imposed under this section will be collected by the Department of Human Services and deposited in the Department of Human Services Account established under ORS 409.060.

(4) Penalties paid under this section are in addition to the Medicaid Managed Care tax.

(5) If the Department determines that a PHP is subject to a penalty under this section, it will issue a Notice of Proposed Action as described in OAR 410-050-0190.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch 736 § 40

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0190

Notice of Proposed Action

(1) Prior to issuing a Notice of Proposed Action, the Department will notify the PHP of a potential deficiency or failure to report that could give rise to the imposition of a penalty and provide the PHP with not less than 30 calendar days from the date of the notice to respond to the notification. The Department may consider the response, if any, and any amended report under OAR 410-050-0150 in its Notice of Proposed Action.

(2) The Department will notify the PHP if it determines that the PHP is subject to the imposition of a penalty for a calendar quarter or if there is a Deficiency for a calendar quarter.

(3) Contents of the Notice of Proposed Action must include:

(a) The applicable calendar quarter;

(b) The basis for determining the corrected amount of tax for the quarter;

(c) The corrected tax due for the quarter as determined by the Department;

(d) The amount of tax paid for the quarter by the PHP;

(e) The resulting Deficiency, which is the difference between the amount received by the Department for the calendar quarter and the corrected amount due as determined by the Department;

(f) Statutory basis for the penalty;

(g) Amount of penalty per day of Delinquency;

(h) Date upon which the penalty began to accrue;

(i) Date the penalty stopped accruing or circumstances under which the penalty will stop accruing;

(j) The total penalty accrued up to the date of the notice; and

(k) Instructions for responding to the notice, and a statement of the PHP's right to a hearing.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch 736 § 50

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0200

Required Notice

(1) Any notice required to be sent under these rules to the PHP will be sent to the person and address identified as the point of contact for the PHP in its contract with the Department of Human Services under ORS 414.725.

(2) Any notice required to be sent to the Department under these rules shall be sent to the contact point identified on the communication from the Department to the PHP.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch 736 § 50

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0210

Hearing Process

(1) Any PHP that receives a Notice of Proposed Action may request a contested case hearing under ORS 183.310 to 183.550.

(2) The PHP may request a hearing by submitting a written request within 20 days of the date of the Notice of Proposed Action.

(3) Prior to the hearing, the Department and PHP will meet for an informal conference.

(4) Except as provided in subsection (e) of this rule, if the case proceeds to a hearing, the administrative law judge will issue a proposed order with respect to the Notice of Proposed Action. The Department will issue a Final Order.

(5) Nothing in this section will preclude the Department and the PHP from agreeing to informal disposition of the contested case at any time, consistent with ORS 183.415(5).

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch 736 § 50

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0220

Final Order of Payment

The Department will issue a Final Order of Payment for deficiencies and/or penalties when:

(1) Any part of the deficiency or penalty was upheld after a hearing;

(2) The PHP did not make a timely request for a hearing; or

(3) Upon the agreement of the PHP and the Department.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch 736 § 37-51

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0230

Remedies Available after Final Order of Payment

Any amounts due and owing under the Final Order of Payment and any interest thereon may be recovered by the State of Oregon as a debt to the State, using any available legal and equitable remedies. These remedies include, but are not limited to:

(1) Collection activities including but not limited to deducting the amount of the final Deficiency and/or Penalty from any sum then or later owed to the PHP by the Department;

(2) Every payment obligation shall bear interest at the statutory rate of interest in ORS 82.010 accruing from the date of the Final Order of Payment and continuing until the payment obligation, including interest has been discharged.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch 736 § 37-51

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

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410-050-0240

Director Determines the Tax Rate

- (1) The tax rate is determined by the Director.
- (2) The tax rate for the period beginning January 1, 2004 through April 30, 2004 is 0 percent. The tax rate for the period beginning May 1, 2004 is 5.8 percent.
- (3) The rate may not exceed six (6) percent of Managed Care Premiums paid to a PHP.
- (4) The Director of Human Services may reduce the rate of assessment to the maximum rate allowed under federal law if the reduction is required to comply with federal law. If the rate is reduced pursuant to this section, the Director will notify the PHPs as to the effective date of the rate reduction.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch 736 § 38 & 39
Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

410-050-0250

Sunset Provisions

The Medicaid managed care tax applies to Managed Care Premiums received by Prepaid Health Plans on or after May 1, 2004 and before January 1, 2008.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch 736 § 50
Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04

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Adm. Order No.: OMAP 81-2004
Filed with Sec. of State: 10-29-2004
Certified to be Effective: 11-1-04
Notice Publication Date: 10-1-04
Rules Amended: 410-121-0030

Subject: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs' (OMAP) payments for pharmaceutical products and services provided to clients. OMAP permanently amended 410-121-0030 (Table 121-0030-1) to update the Angiotensin-Converting Enzyme (ACE) Inhibitors and the Non-Steroidal Anti-Inflammatory Drugs (NSAID) classes.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0030

Practitioner-Managed Prescription Drug Plan (PMPDP)

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee for service clients of the Oregon Health Plan will have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Decisions concerning the clinical effectiveness of the prescription drugs are made by licensed health practitioners, informed by the latest peer-reviewed research;

(b) Decisions also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Plan Drug List (PDL):

(a) The PDL is the primary tool that the Department of Human Services (DHS) has developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL consists of prescription drugs in selected classes that DHS, in consultation with the Health Resources Commission (HRC), has determined represent effective drug(s) available at the best possible price;

(c) For each selected drug class, the PDL will identify a drug(s) as the benchmark drug that has been determined to be the most effective drug(s) available for the best possible price;

(d) The PDL will include other drugs in the class that are Medicaid reimbursable and which the Food and Drug Administration (FDA) has determined to be safe and effective if the relative cost is less than the benchmark drug(s). If pharmaceutical manufacturers enter into supplemental discount agreements with DHS that reduce the cost of their drug below that of the benchmark drug for the class, their drug will also be included in the PDL;

(e) A copy of the current PDL is available on the web at: www.dhs.state.or.us/policy/healthplan/guides/pharmacy/

(3) PMPDP PDL Selection Process:

(a) DHS will utilize the recommendations made by the HRC, which result from an evidence-based evaluation process, as the basis for identifying the most effective drug(s) within a selected drug class;

(b) DHS will determine the drug(s) identified in (3)(a) that is (are) available for the best possible price and will consider any input from the HRC about other FDA-approved drug(s) in the same class that are available for a lesser relative price. Relative price will be determined using the methodology described in subsection (4);

(c) Drug classes and selected drug(s) for the drug classes will be reviewed annually:

(A) Review will occur more frequently at the discretion of DHS if new safety information or the release of new drugs in a class or other information makes a review advisable;

(B) New drugs will not be added to the PDL until they have been reviewed by the HRC;

(C) All changes or revisions to the PDL will be made publicly, using the rulemaking process, and will be published on OMAP's Pharmaceutical Services provider rules web page.

(4) Relative cost and best possible price determination:

(a) DHS will determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) DHS may also consider dosing issues, patterns of use and compliance issues. These factors will be weighed with any advice provided by the HRC in reaching a final decision;

(c) DHS will determine the benchmark drug based on (4)(b) and on the Estimated Acquisition Cost (EAC) on the first of the month (OAR 410-121-0180), in which DHS reviews that specific drug class;

(d) Once the cost of the benchmark drug is determined, the cost of the other FDA-approved drugs in the class will be recalculated using EAC for retail pharmacies in effect on the first of the month in which DHS reviews that specific drug class (OAR 410-121-0180), less average available rebate. Drugs with prices under the benchmark drug cost will be included on the PDL.

(5) Regardless of the PDL, prescriptions shall be dispensed in the generic form unless practitioner requests otherwise subject to the regulations outlined in OAR 410-121-0155.

Table 121-0030-1, PMPDP PDL (updated effective 11/01/2004)

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04

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Adm. Order No.: OMAP 82-2004
Filed with Sec. of State: 10-29-2004
Certified to be Effective: 11-1-04
Notice Publication Date: 10-1-04
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. Rule 410-121-0157, temporarily amended September 2004, to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations, is permanently amended. Updates include information from CMS Release #132, dated June 22, 2004 and Release #133, dated August 13, 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 outpa-

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tient 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 #132, dated June 22, 2004 and the OMAP Master Pharmaceutical Manufacturer's Rebate Lists, alphabetical and numeric, by manufacturer, updated July 19, 2004 and Release #133, dated August 13, 2004 and the OMAP Master Pharmaceutical Manufacturer's Rebate Lists, alphabetical and numeric, by manufacturer, updated August 24, 2004. This information is available on the Department of Human Services' website: 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; OMAP 53-2004(Temp), f. & cert. ef. 9-10-04 thru 2-15-05; OMAP 82-2004, f. 10-29-04 cert. ef. 11-1-04

Adm. Order No.: OMAP 83-2004

Filed with Sec. of State: 10-29-2004

Certified to be Effective: 11-1-04

Notice Publication Date: 10-1-04

Rules Amended: 410-141-0520

Subject: The Oregon Health Plan (OHP) administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. Rule 410-141-0520 in the OHP, temporarily amended to adopt the October 1, 2004 technical changes to the Prioritized List of Health Services as approved by Centers for Medicare and Medicaid Services (CMS), is permanently amended.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0520

Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission's (HSC) listing of physical health services with "expanded definitions" of Ancillary Services and Preventive Services and the HSC's practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The HSC maintains the most current list on the HSC website (http://www.ohpr.state.or.us/hsc/index_hsc.htm) or, for a hardcopy, contact the Office of Health Policy and Research. This rule incorporates by reference the October 1, 2003 Prioritized List with technical revisions effective April 1, 2004 and October 1, 2004, including expanded definitions and practice guidelines, and available on the HSC website.

(2) Certain Mental Health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP). These codes are identified on their own Mental Health (MH) section of the appropriate lines on the Prioritized List of Health Services.

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP or by a provider who has a letter of approval from the Office of Mental Health and Addiction Services and approval to bill Medicaid for CD services.

(4) The October 1, 2003 Prioritized List with technical revisions effective April 1, 2004 and October 1, 2004, is in effect and condition/treatment pairs through line 546 are funded.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-1-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-04; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04

Adm. Order No.: OMAP 84-2004

Filed with Sec. of State: 11-1-2004

Certified to be Effective: 11-1-04

Notice Publication Date: 10-1-04

Rules Amended: 410-125-0047

Subject: The Hospital Services Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. OAR 410-125-0047, temporarily amended effective September 1, 2004, to clarify the language and to assist hospitals and managed care organizations in the administration of the limited hospital benefit for clients who are eligible for OMAP's Standard Benefit package, is permanently amended.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-125-0047

Limited Hospital Benefit Package for the OHP Standard Population

(1) The Oregon Health Plan (OHP) Standard population has a limited hospital benefit for urgent or emergent inpatient and emergency room services effective on August 1, 2004 through August 31, 2004. The limited hospital benefit for inpatient, outpatient, and emergency room services is effective on and after September 1, 2004.

(2) The limited hospital benefit includes the ICD-9 CM codes listed in the OHP Standard Population — Limited Hospital Benefit Code List. This rule incorporates by reference the OHP Standard Population — Limited Hospital Benefit Code List. This list includes diagnoses requiring prior authorization indicated by letters prior authorization (PA) next to the code number. The most current list, dated September 1, 2004, is available on the web site (www.dhs.state.or.us/policy/healthplan/guides/hospital/), or contact the Office of Medical Assistance Programs for hardcopy.

(3) The Office of Medical Assistance Programs (OMAP) will reimburse hospitals for inpatient (diagnostic and treatment) services, outpatient (diagnostic and treatment services) and emergency room (diagnostic and treatment) based on the following:

(a) For treatment, the diagnosis must be listed in the OHP Standard Population — Limited Hospital Benefit Code List;

(b) For treatment the diagnosis must be above the funding line on the Prioritized List of Health Services (HSC List) (OAR 410-141-0520);

(c) The diagnosis (ICD-9) must pair with the treatment (CPT code); and

(d) Prior authorization (PA) must be obtained for codes indicated in the OHP Standard Population — Limited Hospital Benefit Code List. PA request should be directed to OMAP's contracted Quality Improvement Organization (QIO) and will follow the present (current) PA process. PAs must be processed as expeditiously as the client's health condition requires.

(e) Medically appropriate services required to make a definitive diagnosis are a covered benefit.

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(4) Some non-diagnostic outpatient hospital services (e.g. speech, physical or occupational therapy, etc.) are not a covered benefits for the OHP Standard population (see the individual program for coverage).

(5) For benefit implementation process and PA requirements for the client enrolled in a Fully Capitated Health Plan (FCHP) and/or Mental Health Organization (MHO), contact the client's FCHP or MHO. The FCHP and/or MHO may have different requirements than OMAP.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 52-2004(Temp), f. & cert. ef. 9-1-04 thru 2-15-05; OMAP 84-2004, f. & cert. ef. 11-1-04

Adm. Order No.: OMAP 85-2004(Temp)

Filed with Sec. of State: 11-4-2004

Certified to be Effective: 11-4-04 thru 3-29-05

Notice Publication Date:

Rules Amended: 410-007-0230

Rules Suspended: 410-007-0230(T)

Subject: These rules standardize criminal record and background check processes through much of the Department of Human Services. The rules define who is subject to the background check and defines the process. The rules establish a common set of potentially disqualifying crimes and the criteria that must be employed to determine fitness or suitability. The rules establish a standardized appeal process. This amendment corrects and clarifies a Qualified Entity.

Rules Coordinator: Pat Bougher—(503) 945-5844

410-007-0230

Qualified Entity

(1) Approval Required. A qualified entity must be approved in writing by the Department pursuant to these rules in order to appoint an authorized designee or contact person.

(2) Revocation. The Department may suspend or revoke the written approval of a qualified entity for failure of the qualified entity, an appointed authorized designee or a contact person to comply with these rules.

(3) Appointment of Authorized Designees and Contact People. Qualified entities approved by the Department must appoint authorized designees or contact persons within 90 days of Department approval. All qualified entities having criminal history checks processed by the Department under these rules on or before October 1, 2004, must appoint authorized designees or contact persons in accordance with these rules, no later than March 1, 2005.

(a) A qualified entity with 10 or more employees:

(A) Must appoint one or more authorized designees,

(B) May also appoint one or more contact persons.

(b) A qualified entity with fewer than 10 employees:

(A) Is not eligible to appoint authorized designees, but must rely on the Department or another approved qualified entity to conduct fitness determinations for subject individuals,

(B) Must appoint one or more contact persons, or must rely on an appointed contact person or authorized designee from a qualified entity to handle the responsibilities of a contact person.

(4) Revocation of Approval. Approval may be revoked by the Department if the Department determines that the qualified entity, or a contact person or authorized designee appointed by the qualified entity, has failed to comply with these rules.

Stat. Auth.: ORS 181.537, 409.010, 409.050, 410.20(3)(d), 418.016, 418.640, 411.022, 411.055, 443.730, 443.735(3)

Stats. Implemented: ORS 181.537, 409.010, 409.050, 410.20(3)(d), 418.016, 418.640, 411.022, 411.055, 443.730, 443.735(3)

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 85-2004(Temp), f. & cert. ef. 11-4-04 thru 3-29-05

Adm. Order No.: OMAP 86-2004(Temp)

Filed with Sec. of State: 11-9-2004

Certified to be Effective: 11-9-04 thru 5-7-05

Notice Publication Date:

Rules Adopted: 410-050-0700, 410-050-0710, 410-050-0720, 410-050-0730, 410-050-0740, 410-050-0750, 410-050-0760, 410-050-0770, 410-050-0780, 410-050-0790, 410-050-0800, 410-050-0810, 410-050-0820, 410-050-0830, 410-050-0840, 410-050-0850, 410-050-0860, 410-050-0870

Subject: Effective November 5, 2004, the Office of Finance and Policy Analysis is adopting as temporary rules, Oregon Administrative Rules 410-050-0700 through 410-050-0870, Hospital Tax, relating to the taxation of hospitals in the State of Oregon.

Rules Coordinator: Patricia Bougher—(503) 945-5844

410-050-0700

Definitions

The following definitions apply to this section of the Oregon Administrative Rules:

(1) "Bad debt" means the current period charge for actual or expected uncollectible accounts resulting from the extension of credit on inpatient and outpatient hospital services. Bad debt charges would be offset by any recoveries received on accounts receivable during that current period, subject to final tax reporting and reconciliation processes required in these rules.

(2) "Charges for Inpatient Care" means gross inpatient charges generated from room, board, general nursing, and ancillary services provided to patients, who are expected to remain in the Hospital at least overnight, and occupy a bed (as distinguished from categories of health care items or services identified in 42 CFR §433.56(a)(2)–(19) that are not charges for inpatient hospital services). Charges for inpatient care include all payors, and are not limited to Medicaid patients.

(3) "Charges for Outpatient Care" means gross outpatient charges, generated from services provided by the Hospital to a patient who is not confined overnight. These services include all ancillary and clinic facility charges (as distinguished from categories of health care items or services identified in 42 CFR §433.56(a)(1) and (3)–(19) that are not charges for outpatient hospital services). Charges of Outpatient Care include all payors and are not limited to Medicaid charges.

(4) "Charity Care" means costs for providing inpatient or outpatient care services free of charge or at a reduced charge because of the indigence or lack of health insurance of the patient receiving the care services. Charity Care results from a Hospital's policy as reflected in its official financial statements to provide inpatient or outpatient hospital care services free of charge or at a reduced charge to individuals who meet financial criteria; except that Charity Care does not include any amounts above the payments by the Department that constitute payment in full under ORS 414.065(3), or above the payment rate established by contract with a prepaid managed care health services organization or health insurance entity for inpatient or outpatient care provided pursuant to such contract, or above the payment rate established under ORS 414.743 for inpatient or outpatient care reimbursed under that statute.

(5) "Contractual Adjustments" means the difference between the amounts charged based on the Hospital's full established charges and the amount received or due from the payor.

(6) "Declared Fiscal Year" means the Fiscal Year declared to the IRS.

(7) "Deficiency" means the amount by which the tax as correctly computed exceeds the tax, if any, reported and paid by the Hospital. If, after the original Deficiency has been assessed, subsequent information shows the correct amount of tax to be greater than previously determined, an additional Deficiency arises.

(8) "Delinquency" means the hospital failed to file a report when due as required under these rules or to pay the tax as correctly computed when the tax was due.

(9) "Department" means the Oregon Department of Human Services or its successor organization.

(10) "Director" means the Director of the Oregon Department of Human Services or the Director's designee or agent.

(11) "Hospital" means a hospital with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, or to provide treatment for the mentally ill. 'Hospital', as it is used in this section, does not include special inpatient care facilities, as that term is defined in ORS 442.015(33). For purposes of these rules, the Hospital shall be identified by using the federal taxpayer identification number for the Hospital.

(12) "Net Revenue":

(a) Means the total amount of Charges for Inpatient or Outpatient Care provided by the Hospital to patients, less Charity Care, Bad Debts and Contractual Adjustments;

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(b) Does not include revenue derived from sources other than inpatient or outpatient operations, including but not limited to interest and guest meals; and

(c) Does not include any revenue that is taken into account in computing a long term care assessment under the Long Term Facility Tax.

(13) "Waivered Hospital" means a Type A or Type B hospital, as described in ORS 442.470, or a hospital that provides only psychiatric care.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0710

General Administration

(1) The purpose of these rules is to implement the tax imposed on Hospitals in the State of Oregon.

(2) The Department will administer, enforce and collect the hospital tax. The Department may assign employees, auditors and such other agents as the Director may designate to assist in the administration, enforcement and collection of the taxes.

(3) The Department may make such rules and regulations, not inconsistent with legislative enactments, that it considers necessary to administer, enforce and collect the taxes.

(4) The Department may adopt such forms and reporting requirements, and change the forms and reporting requirements, as necessary to administer, enforce and collect the taxes.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0720

Disclosure of Information

(1) Except as otherwise specifically provided by law, the Department must not publicly divulge or disclose the amount of income, expense, or other particulars set forth or disclosed in any report or return required in the administration of the taxes. "Particulars" includes but is not limited to, social security numbers, employer number or other Hospital identification number, and any business records required to be submitted to or inspected by the Department or its designee to allow it to determine the amounts of any assessments, delinquencies, deficiencies, penalties or interest payable or paid, or otherwise administer, enforce or collect a health care assessment to the extent that such information would be exempt from disclosure under ORS 192.501(5) or other basis for exemption under the Oregon Public Records Law.

(2) The Department may:

(a) Furnish any Hospital, or representative authorized to represent the Hospital, upon request of the Hospital or representative, with a copy of the Hospital's report filed with the Department for any quarter, or with a copy of any report filed by the Hospital in connection with the report, or with a copy of any other information the Department considers necessary.

(b) Publish information or statistics so classified as to prevent the identification of income or any particulars contained in any report or return.

(c) Disclose and give access to an officer or employee of the Department or its designee, or to the authorized representatives of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the Controller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice, the Oregon Department of Justice Medicaid Fraud Control Unit, and such other employees of the State or Federal government to the extent the Department deems disclosure or access necessary or appropriate for the performance of official duties in the Department's administration, enforcement or collection of the taxes.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0730

Entities Subject to the Hospital Tax

Each Hospital in the State of Oregon is subject to the hospital tax except:

(1) Hospitals operated by the United States Department of Veterans Affairs;

(2) Pediatric specialty hospitals providing care to children at no charge; and

(3) Waivered Hospitals, as that term is defined in OAR 410-050-0700(13).

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0740

The Hospital Tax: Calculation, Report, Due Date

(1) The amount of the tax equals the tax rate multiplied by the Net Revenue of the Hospital, consistent with OAR 410-050-0750 and 410-050-0860. The tax will be imposed on Net Revenues earned by the Hospital on or after January 1, 2004, based on calendar quarters. The first calendar quarter begins on January 1; the second calendar quarter begins on April 1; the third calendar quarter begins on July 1; and the fourth calendar quarter begins on October 1.

(2) The rate of the assessment will be determined in accordance with OAR 410-050-0860.

(3) The Hospital must pay the quarterly tax and file the quarterly report on a form approved by the Department on or before the 75th day following the end of the calendar quarter for which a tax is due. The Hospital must provide all information required on the report.

(4) The tax becomes operative on July 1, 2004. The first due date for a quarterly tax and report will be 75 days from September 30, which is December 13, 2004.

(5) The final report and final tax payment, including reconciliation report, shall be due and shall be submitted to the Department not later than the final day of the sixth calendar month after the Hospital's Declared Fiscal Year end. Failure to file and pay when due shall be a Delinquency.

(6) Any report, statement or other document required to be filed under any provision of these rules shall be certified by the Chief Financial Officer of the hospital or an individual with delegated authority to sign for the Hospital's Chief Financial Officer. The certification must attest, based on best knowledge, information and belief, to the accuracy, completeness and truthfulness of the document.

(7) Payments may be made electronically or by paper check. If the Hospital pays electronically, the accompanying report may either be faxed to the Department at the fax number provided on the report form or mailed to the Department at the address provided on the report form. If the Hospital pays by paper check, the accompanying report must be mailed with the check to address provided on the report form.

(8) The Department may charge the Hospital a fee of \$100 if, for any reason, the check, draft, order or electronic funds transfer request is dishonored. This charge is in addition to any penalty for nonpayment of the taxes that may also be due.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0750

Reporting Total Net Revenue, Use of Estimated Revenue for Quarterly Reports

(1) A Hospital must submit quarterly reports and quarterly payments for the calendar quarters for which a tax is due consistent with subsection (2) of this rule, and must submit a final report that includes a reconciliation report, audited financial statement, and the final tax payment based on the Hospital's Declared Fiscal Year end consistent with subsection (3) of this rule.

(2) The quarterly reports and quarterly tax payments shall be based on estimated Net Revenue, which shall be referred to as estimated tax. Estimated tax is the amount of tax the Hospital expects to owe for the current taxable calendar quarter. The Hospital shall calculate the estimated tax based on Net Revenues using the Hospital's interim financial results for the quarter for which the tax is due. An estimated tax report and payment is due for each calendar quarter for which a tax is due, based on the rate of tax applicable to that quarter.

(3) The final report and final tax payment shall be based on the amount of tax the Hospital actually owes based on annual Net Revenue for all calendar quarters for which an estimated tax payment is due during the Hospital's Declared Fiscal Year. The Hospital shall calculate the annual Net Revenue for the Hospital's Declared Fiscal Year. The final tax payment due to the Department will be the calculated tax (using the tax rate applicable to the appropriate quarter, described in subsection (c) below for final tax calculation purposes) on the annual Net Revenue reduced by the estimated tax payments made for each taxable quarter of the Hospital's Declared Fiscal Year.

(a) When the final tax and final report are submitted, they must be accompanied by the Hospital's Declared Fiscal Year end audited financial statement for the Declared Fiscal Year on which the final report and final tax payments are based.

(b) The final report shall include a reconciliation report describing the relationship between the audited financial statement and annual Net Revenues subject to the tax. The reconciliation report may be descriptive in

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form and should be consistent with the accounting principles used in the audited financial statement.

(c) The tax rate applicable to the final tax shall be calculated as follows:

(A) If all taxable quarters were subject to the same tax rate established in OAR 410-050-0160, then the tax rate applicable to the final reconciliation is the tax rate applicable to all such quarters. For example, if the Hospital's Declared Fiscal Year is July 1, 2004 to June 30, 2005, then the tax rate is .93 percent of annual Net Revenue.

(B) If different tax rates apply to calendar quarters in the Hospital's Declared Fiscal Year, the Hospital shall apply a blended rate to the total annual Net Revenue to determine the final tax due. A blended rate is the average of the rates applicable to all taxable quarters. The Department will notify the Hospital of the amount of the applicable blended rate. For example, if the Hospital's Declared Fiscal Year overlaps two quarters taxed at a rate of .93 percent and two quarters taxed at .50 percent, then the blended rate for purposes of the annual reconciliation is .715. For purposes of the final tax due, the Hospital shall multiply the annual Net Revenue by the blended rate.

(d) If the total estimated tax payments already paid by the Hospital for the Declared Fiscal Year exceeds the amount of the final tax actually due, the final report should identify such difference and the Hospital should adjust the final tax due amount accordingly in the final report for that tax year.

(e) The final report, audited financial statement, and final tax payment, including reconciliation report, shall be due and shall be submitted to the Department not later than the final day of the sixth calendar month after the Hospital's Declared Fiscal Year end. Failure to file and pay when due shall be a Delinquency.

(f) If the Declared Fiscal Year end audited financial statement for the Hospital is not available within the time required in subsection (e), a final tax payment and final report are still required to be submitted within the time period specified under subsection (e). The Hospital may use interim financial statements to determine that amount of the final tax due and may submit a justification statement with the final report due not later than the date specified in subsection (e) signed by the Chief Financial Officer of the Hospital informing the Department when the audited financial statement is due and certifying that an amended final report, including the reconciliation report, shall be provided to the Department within 30 days of the Hospital's receipt of the audited financial statement. Reports and payments made after the time period required in subsection (e) must be submitted in compliance with OAR 401-050-0760, Filing an Amended Report.

(g) In the event the Hospital does not receive audited financial statements, internal financial statements signed by the Hospital's Chief Financial Officer must be submitted where these rules otherwise require audited financial statements.

(h) If the effective date of the tax is not at the start of the Hospital's Declared Fiscal Year, then the annual Net Revenue for the first final tax return will be calculated based on the number of quarters subject to the tax versus the total number of quarters in the Hospital's Declared Fiscal Year. For example, if the tax is effective on July 1, 2004, for a Hospital with a Declared Fiscal Year ending December 31, 2004, the annual Net Revenues would be calculated as follows: Total Net Revenues for the Declared Fiscal Year divided by two (two of four quarters subject to the tax).

(4) The Department will not find a payment Deficiency for estimated quarterly taxes as long as the Hospital paid the estimated taxes and submitted the quarterly report not later than the quarterly due date and such estimated tax amount was not less than the equivalent of the tax payment that would have been determined based on the Hospital's annual Net Revenue for its most recent prior Declared Fiscal Year divided by four (4) and multiplied times the tax rate for the quarter in which the actual estimated tax is due. Annual Net Revenue for purposes of subsection (4) of this rule means the twelve (12) month period in which the Hospital's most recent prior Declared Fiscal Year occurred, regardless of whether the prior quarters were subject to a tax. For example, if the annual Net Revenue for the most recent prior Declared Fiscal Year was \$4 million; divide that total by 4 (\$1 million) and multiply the product times the current tax rate for the taxable quarter (0.93 percent). In this example, the estimated quarterly tax payment may not be less than \$9,300 in order to receive the benefit of subsection (4) of this rule.

(a) If the Hospital seeks to use the process in subsection (4) of this rule, not later than the date on which the first quarterly estimated tax and report is due (for example, December 13, 2004, for the first taxable quarter), the Hospital must provide the Department with a copy of the Hospital's audited financial statement for the Hospital's most recent prior Declared

Fiscal Year and identify the Hospital's annual Net Revenue amount for that Declared Fiscal Year, regardless of whether any taxes were due for that year.

(b) In the event that the Hospital does not receive audited financial statements, internal financial statements from the Hospital's most recent prior Declared Fiscal Year signed by the Chief Financial Officer may be used for this purpose.

(5) There will be a Delinquency for each quarter the Hospital fails to pay the estimated tax when due. There will be a Delinquency if the Hospital fails to pay the final tax when due.

(6) A Hospital must declare the date of the Hospital's Declared Fiscal Year end for purposes of establishing final tax reporting requirements under this rule. The declaration must be filed with the Department not later than December 13, 2004, or the first date that an estimated quarterly report and tax is due. The Hospital must notify the Department within 30 days of a change to the Hospital's Declared Fiscal Year end. Such a change in Declared Fiscal Year end shall be applied to the Hospital's next future Declared Fiscal Year for purposes of calculating the final tax and filing the final report.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch. 736

Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0760

Filing an Amended Report

(1) A Hospital that submits a Final Report without an audited financial statement in accordance with OAR 410-050-0750(3)(f) must submit within 180 days after the due date of the Final report OAR 410-050-0750(e) an Amended Final report, an audited financial statement, and payment for taxes and deficiencies.

(1) Claim for Refund:

(a) If the amount of the tax imposed by these rules in the Amended Final Report is less than the amount paid by the Hospital, such overpayment may be refunded by the Department to the Hospital. In no event will a refund exceed the tax amount actually paid by the Hospital.

(b) The Hospital must provide all information required on the report. No refunds will be made prior to the Department receiving the Hospital audited financial statement for the Declared Fiscal Year. The Department may audit the Hospital, request additional information or request an informal conference prior to granting a refund or as part of its review.

(c) If there is an amount due from the Hospital to the Department for any past due taxes or penalties, any refund otherwise allowable will first be applied to the unpaid taxes and penalties, and the Hospital so notified.

(d) A Hospital may not deduct from current, prospective or future tax payments an amount to which it claims to be entitled as a refund for a prior period. The claim for refund must be made to the Department consistent with this rule.

(3) Payment of Delinquency:

(a) If the amount of the annual tax imposed by these rules is more than the amount paid by the Hospital, the Hospital must file an Amended Final Report and pay the tax and Deficiency. The penalty under OAR 410-050-0800 will stop accruing after the Department receives the Amended Final Report, the annual audited financial statement, and payment of the total Deficiency for year; except to the extent provided in OAR 410-050-0750(4)(a).

(b) No refunds will be made prior to the Department receiving the Hospital audited financial statement for the Declared Fiscal Year. The Department may audit the Hospital, request additional information, or request an informal conference prior to granting a refund or as part of its review.

(c) If there is an error in the determination of the tax due, the Hospital may describe the circumstances of the late additional payment with the filing of the amended report. The Department, in its sole discretion, may determine that such a late additional payment does not constitute a failure to file a report or pay an assessment giving rise to the imposition of a penalty. In making this determination, the Department will consider the circumstances, including but not limited to: nature and extent of the error; Hospital explanation of the circumstances related to the error; evidence of prior errors; and evidence of prior penalties (including evidence of informal dispositions or settlement agreements). This provision only applies if the Hospital has filed a timely original return and paid the assessment identified in the return.

(4) If the Department discovers or identifies information in the administration of these tax rules that it determines could give rise to the issuance of a Notice of Proposed Action, DHS will notify the Hospital of the information that could give rise to the issuance of a Notice of Proposed

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Action. The Hospital will have 30 calendar days from the date of the Department's notice to respond. It is the Hospital's responsibility to determine what response, if any, it will make. The Hospital may request a refund pursuant to subsection (2) of this rule or file an Amended Final Report pursuant to subsection (3) of this rule. Nothing in this subsection (4) prevents or limits DHS from issuing a Notice of Proposed Action pursuant to OAR 410-050-0810.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0770

Determining the Date Filed

For the purposes of these rules, any reports, requests, appeals, payments or other response by the Hospital must be received by the Department either:

- (1) Before the close of business on the date due; or
- (2) If mailed, postmarked before midnight of the due date.
- (3) When the due date falls on a Saturday, Sunday or a legal holiday, the return is due on the next business day following such Saturday, Sunday or legal holiday.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0780

Departmental Authority to Audit Records

(1) The Hospital must maintain financial records necessary and adequate to determine the Net Revenue for any calendar period for which a tax may be due.

(2) The Department or its designee may audit the Hospital's records at any time for a period of five years following the date the tax is due to verify or determine the Hospital's Net Revenue.

(3) The Department may issue a Notice of Deficiency or issue a refund based upon its findings during the audit.

(4) Any audit, finding or position may be reopened if there is evidence of fraud, malfeasance, concealment, misrepresentation of material fact, omission of income, or collusion either by the Hospital or by the Hospital and a representative of the Department.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0790

Assessing Tax on Failure to File

(1) The law places an affirmative duty on the Hospital to file a timely and correct report.

(2) In the case of a failure by the Hospital to file a report or to maintain necessary and adequate records, the Department will determine the tax liability of the Hospital according to the best of its information and belief. "Best of its information and belief" means that the Department will use evidence available to the Department at the time of the determination on which a reasonable person would rely in determining the tax. The Department's determination of tax liability will be the basis for the assessment due in any Notice of Proposed Action.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0800

Financial Penalty for Failure to File a Report or Failure to Pay Tax When Due

(1) A Hospital that fails to file a report or pay a tax when due will be subject to a penalty of \$500 per day of Delinquency. The penalty accrues from the date of Delinquency, notwithstanding the date of any notice under these rules.

(2) The total amount of penalty imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which penalty is being imposed.

(3) Penalties imposed under this section will be collected by the Department of Human Services and deposited in the Department of Human Services Account established under ORS 409.060.

(4) Penalties paid under this section are in addition to the Hospital's tax liability.

(5) If the Department determines that a Hospital is subject to a penalty under this section, it will issue a Notice of Proposed Action as described in OAR 410-050-0810.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0810

Notice of Proposed Action

(1) Prior to issuing a Notice of Proposed Action, the Department will notify the Hospital of the potential Deficiency or failure to report that could give rise to the imposition of a penalty and provide the Hospital with not less than 30 calendar days from the date of the notice to respond to the notification. The Department may consider the response, if any, and any Amended Final Report under OAR 410-050-0760 in its Notice of Proposed Action.

(2) The Department will notify the Hospital if it determines that the Hospital is subject to the imposition of a penalty.

(3) Contents of the Notice of Proposed Action must include:

- (a) The applicable reporting period;
- (b) The basis for determining the corrected amount of tax;
- (c) The corrected tax due as determined by the Department;
- (d) The amount of tax paid by the Hospital;
- (e) The resulting Deficiency, which is the difference between the amount received by the Department and the corrected amount due as determined by the Department;
- (f) Statutory basis for the penalty;
- (g) Amount of penalty per day of Delinquency;
- (h) Date upon which the penalty began to accrue;
- (i) Date the penalty stopped accruing or circumstances under which the penalty will stop accruing;
- (j) The total penalty accrued up to the date of the notice; and
- (k) Instructions for responding to the notice, and a statement of the Hospital's right to a hearing.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0820

Required Notice

(1) Any notice required to be sent under these rules will be sent to the Hospital's main address, to the attention of the hospital administrator, as listed by the Department's Health Care Licensure and Certification Unit's "Acute Care Provider List."

(2) Any notice required to be sent to the Department under these rules shall be sent to the contact point identified on the communication from the Department to the Hospital.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0830

Hearing Process

(1) Any Hospital that receives a Notice of Proposed Action may request a contested case hearing under ORS 183.310 to 183.550.

(2) The Hospital may request a hearing by submitting a written request within 20 days of the date of the Notice of Proposed Action.

(3) Prior to the hearing, the Department and Hospital will meet for an informal conference.

(4) Except as provided in subsection (5) of this rule, if the case proceeds to a hearing, the administrative law judge will issue a proposed order with respect to the Notice of Proposed Action. The Department will issue a Final Order.

(5) Nothing in this section will preclude the Department and the Hospital from agreeing to informal disposition of the contested case at any time, consistent with ORS 183.415(5).

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0840

Final Order of Payment

A Final Order of Payment is a final DHS action, expressed in writing, based on a Notice of Proposed Action where a payment amount is due to the Department. The Department will issue a Final Order of Payment for Deficiencies and/or penalties when:

- (1) The Hospital did not make a timely request for a hearing;
- (2) Any part of the Deficiency and/or penalty was upheld after a hearing; or

(3) Upon the agreement of the Hospital and the Department.

Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

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410-050-0850

Remedies Available after Final Order of Payment

Any amounts due and owing under the Final Order of Payment and any interest thereon may be recovered by the State of Oregon as a debt to the State, using any available legal and equitable remedies. These remedies include, but are not limited to:

(1) Collection activities including but not limited to deducting the amount of the final Deficiency and/or Penalty from any sum then or later owed to the Hospital by the Department; and

(2) Every payment obligation owed by the Hospital to the Department under a Final Order of Payment shall bear interest at the statutory rate of interest in ORS 82.010 accruing from the date of the Final Order of Payment and continuing until the payment obligation, including interest has been discharged.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch. 736

Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0860

Director Determines Rate of Tax

(1) The tax rate is determined by the Director.

(2) The tax rate for the period beginning January 1, 2004 through June 30, 2004 is 0 percent. The tax rate for the period beginning July 1, 2004 is 0.93 percent.

(3) The Director may reduce the rate of assessment to the maximum rate allowed under federal law if the reduction is required to comply with federal law. If the rate is reduced pursuant to this section, the Director will notify the Hospitals as to the effective date of the rate reduction.

(4) A Hospital is not guaranteed that any additional moneys paid to the Hospital in the form of payments for services will equal or exceed the amount of the assessment paid by the Hospital.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch. 736

Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

410-050-0870

Sunset Provisions

The hospital tax applies to Net Revenue received by Hospitals on or after January 1, 2004 and before January 1, 2008.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch. 736

Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05

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Adm. Order No.: OMAP 87-2004

Filed with Sec. of State: 11-10-2004

Certified to be Effective: 12-1-04

Notice Publication Date: 10-1-04

Rules Adopted: 410-009-0080, 410-009-0150

Rules Ren. & Amended: 309-040-0200 to 410-009-0050, 309-040-0210 to 410-009-0060, 309-040-0220 to 410-009-0070, 309-040-0230 to 410-009-0090, 309-040-0240 to 410-009-0100, 309-040-0250 to 410-009-0110, 309-040-0260 to 410-009-0120, 309-040-0270 to 410-009-0130, 309-040-0280 to 410-009-0140, 309-040-0290 to 410-009-0160

Subject: Chapter 410, Division 009, Abuse Reporting and Protective Services in Community Programs and Community Facilities rules incorporate the following changes permanently:

A. Updates the rule to include statutory changes effective January 1, 2004 by: adding neglect to the definition of abuse; requiring training of designees so that they conduct a thorough and unbiased investigation and determination; and requiring that the training addresses the cultural and social diversity of the people of Oregon.

B. Conforms rule language to be consistent with HIPAA confidentiality requirements.

C. Adds definitions for brokerage, care provider, substantiated, inconclusive, not substantiated and unbiased investigation.

D. Clarifies requirements for after hours reporting system.

E. Describes the investigation process in the event designee has conflict of interest.

F. Adds statutory language on immunity of persons making reports of abuse in good faith.

Rules Coordinator: Christina Hartman—(503) 731-4405

410-009-0050

Statement of Purpose

Purpose. These rules prescribe standards and procedures for the investigation, assessment for, and provision of protective services in community programs and community facilities, and the nature and content of the abuse investigation and protective services report.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0200, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04

410-009-0060

Definitions

As used in these rules the following definitions apply:

(1) "Abuse" means one or more of the following:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well-being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the adult.

(2) "Abuse investigation and protective services report" means the completed report.

(3) "Adult" means a person who:

(a) Is mentally ill or developmentally disabled;

(b) Is 18 years of age or older;

(c) Receives services from a community program or facility or care provider which is licensed or certified by or contracts with the Department; and

(d) Is the alleged abuse victim.

(4) "Adult Protective Services" means the necessary actions taken to prevent abuse or exploitation of the adult, to prevent self-destructive acts and to safeguard an allegedly abused adult's person, property and funds.

(5) "Brokerage" or "Support Service Brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) through (g) associated with planning and implementation of Support Services for adults with developmental disabilities.

(6) "Care Provider" means an individual or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

(7) "Community facility" means a community residential treatment home or facility, community residential facility, adult foster home, community residential training home or facility, regional acute crisis facility or crisis respite facility.

(8) "Community program" means the community mental health and developmental disabilities program as established in ORS 430.610 through 430.700.

(9) "Designee" means the community program.

(10) "Department" means Seniors and People with Disabilities (SPD) and Health Services organizational units within the Department of Human Services.

(11) "Inconclusive" means that the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur.

(12) "Law enforcement agency" means:

(a) Any city or municipal police department;

(b) Any county sheriff's office;

(c) The Oregon State Police; or

(d) Any district attorney.

(13) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that the adult has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity

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ty, has abused the adult. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 20.295

(14) "Not substantiated" means that the evidence does not support a conclusion that there is reasonable cause to believe that abuse occurred.

(15) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor or podiatrist, including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health services;

(c) Employee of the Department of Human Services, county health department, community mental health and developmental disabilities program or private agency contracting with a public body to provide any community mental health services;

(d) Peace officer;

(e) Member of the clergy;

(f) Licensed clinical social worker;

(g) Physical, speech or occupational therapist;

(h) Information and referral, outreach or crisis worker;

(i) Attorney; or

(j) Any public official who comes in contact with adults in the performance of the official's duties.

(16) "Substantiated" means that the evidence supports a conclusion that there is reasonable cause to believe that abuse occurred.

(17) "Unbiased investigation" means an investigation that is conducted by a community program that does not have an actual or potential conflict of interest with the outcome of the investigation.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0210, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04

410-009-0070

General Duties of the Community Program

(1) For the purpose of carrying out these rules, community programs are the designee of the Department.

(2) If the Department or community program has reasonable cause to believe abuse occurred, it must immediately notify the appropriate public licensing or certifying agency and provide a copy of the abuse investigation and protective services report when completed.

(3) If the Department or community program has reasonable cause to believe that a person licensed by any state agency to provide care has committed abuse, it must immediately notify the appropriate state agency provide that agency with a copy of the abuse investigation and protective services report when completed.

(4) Nothing in this rule prohibits sharing of information by the Department or community program prior to the completion of the abuse investigation and protective services report if this information is necessary for:

(a) The provision of protective services; or

(b) The function of licensing and certifying agencies or law enforcement agencies.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0220, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04

410-009-0080

Training for Persons Investigating Reports of Alleged Abuse

(1) Sufficient training and consultation will be provided to community programs by the Department such that the community program is able to conduct a thorough and unbiased investigation and reach a conclusion about the abuse.

(2) The training will address the cultural and social diversity of the State.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04

410-009-0090

Initial Action on Report of Alleged Abuse

(1) The community program receiving a report alleging abuse will document the information required by ORS 430.743(1) and any additional information reported. The community program will attempt to elicit the following information from the person making a report:

(a) The name, age and present location of the adult;

(b) The names and addresses of persons, programs or facilities responsible for the adult's care;

(c) The nature and extent of the alleged abuse, including any evidence of previous abuse of the adult or by the alleged perpetrator;

(d) Any information that led the person making the report to suspect abuse had occurred;

(e) Any information that the person believes might be helpful in establishing the cause of the abuse and the identity of the alleged perpetrator; and

(f) The date of the incident.

(2) If there is reason to believe a crime has been committed, the designee must notify the law enforcement agency with jurisdiction in the county where the report is made.

(3) If there is reasonable cause to believe that abuse has occurred, the community program must promptly determine if the adult is in danger or in need of immediate protective services and respond accordingly.

(4) The community program will immediately notify the Department upon receipt of a report of abuse in the format provided by the Department.

(5) Each community program must establish an after hours reporting system. Upon receipt of any report of alleged abuse, the community program must begin:

(a) Investigation into the nature and cause of the alleged abuse within one working day of receipt of the report;

(b) Assessment of the need for protective services; and

(c) Provision of protective services, if protective services are needed.

(6) The appropriate medical examiner shall be notified in cases in which the community program or law enforcement agency finds reasonable cause to believe that an adult has died as a result of abuse or where the death occurred under suspicious or unknown circumstances.

(7) Mandatory reporters must report instances, when the reporter has reasonable cause to believe abuse has occurred, to the community program or a local law enforcement agency.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0230, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04

410-009-0100

Investigation of Alleged Abuse

(1) Investigation of abuse will be thorough and unbiased. Accordingly, community programs will not investigate allegations of abuse made against employees of the community program. Investigations of community program staff will be conducted by the Department or other community program not subject to the actual or potential conflict of interest.

(2) In conducting abuse investigation, the investigator:

(a) Must make in person contact with the adult;

(b) Must interview the adult, witnesses, the alleged perpetrator and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances;

(c) Must review all evidence relevant and material to the complaint; and

(d) Should take a photograph of the adult, or arrange for the adult to be photographed, to preserve evidence of the alleged abuse and of the adult's physical condition at the time of investigation, unless the adult knowingly refuses.

(3) All records necessary for the investigation will be available to the community program for inspection and copying. A community facility will provide community programs access to employees, the adult, and the premises for investigation purposes.

(4) When a law enforcement agency is conducting a criminal investigation of the alleged abuse, the community program will also perform its own investigation, as long as it does not interfere with the law enforcement agency investigation, when:

(a) There is potential for action by a licensing or certifying agency;

(b) Timely investigation by law enforcement is not probable; or

(c) The law enforcement agency does not complete a criminal investigation.

(5) When a law enforcement agency is conducting an investigation of the alleged abuse, the community program must communicate and cooperate with the law enforcement agency.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0240, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04

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410-009-0110

Assessment for and Provision of Protective Services to the Adult

Appropriate protective services will be provided to the adult as necessary to prevent further abuse and must be undertaken in a manner that is least intrusive to the adult and provide for the greatest degree of independence available within existing resources. Assessment for the provision of protective services may include:

- (1) Arranging for the immediate protection of the adult;
- (2) Contacting the adult to assess his or her ability to protect his or her own interest and give informed consent;
- (3) Determining the ability of the adult to understand the nature of the protective service and his or her willingness to accept services;
- (4) Coordinating evaluations to determine or verify the adult's physical and mental status, if necessary;
- (5) Assisting in an arranging for appropriate services and alternative living arrangements;
- (6) Assisting in or arranging the medical, legal, financial or other necessary services to prevent further abuse;
- (7) Providing advocacy to assure the adult's rights and entitlements are protected; and
- (8) Consulting with the community facility, program, brokerage or others as appropriate in developing recommendations or requirements to prevent further abuse.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0250, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04

410-009-0120

Abuse Investigation and Protective Services Report

(1) Upon completion of the investigation, and within 45 calendar days of the date of a report alleging abuse, the community programs will prepare an abuse investigation and protective services report which includes:

- (a) A statement of the alleged incident being investigated, including the date(s), location(s) and time(s);
- (b) An outline of steps taken in the investigation, a list of all witnesses interviewed and a summary of the information provided by each witness;
- (c) A summary of findings and conclusion concerning the allegation of abuse;
- (d) A specific finding of substantiated, inconclusive or not substantiated;
- (e) A list of protective services provided to the adult to the date of the abuse investigation and protective services report;
- (f) A plan of action necessary to prevent further abuse of the adult;
- (g) Any additional corrective action required by the community program and deadlines for the completion of these action;
- (h) A list of any notices made to licensing or certifying agencies;
- (i) The name and title of the person completing the report; and
- (j) The date it is written.

(2) Abuse investigation and protective services report formats will be provided by the Department.

(3) A copy of the abuse investigation and protective services report will be provided to the Department within five working days of the report's completion.

(4) A centralized record of all abuse investigation and protective services reports will be maintained by the community programs for all abuse investigations conducted in their county, and by the Department for all abuse investigations in the state.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0260, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04

410-009-0130

Disclosure of the Abuse Investigation and Protective Services Report and Related Documents

(1) Portions of the abuse investigation and protective services report and underlying investigatory documents are confidential and not available for public inspection. Pursuant to ORS 430.763, names of persons who make reports of abuse, witnesses, and the alleged abuse victim are confidential and shall not be available for public inspection. Investigatory documents, including portions of the abuse investigation and protective services report that contains "Individually identifiable health information", as that term is defined under ORS 192.519 and 45 CFR 160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 509.

(2) Notwithstanding subsection (1) of this rule, the Department will make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities or licenses or certifies the persons practicing therein, and to any public agency providing protective services for the adult. The Department will also make the protective services report and underlying investigatory materials available to any private agency providing protective services for the adult and to the protection and advocacy system designated pursuant to ORS Section 192.517(1).

(3) Persons or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and may not redisclose the confidential information to unauthorized persons or entities, as required by state or federal law.

(4) When the report is completed, a redacted version of the abuse investigation report not containing any confidential information, the disclosure of which would be prohibited by state or federal law, will be available for public inspection.

(5) When the abuse investigation and protective services report is conducted by a community program, as the Department's designee, the protective services investigation may be disclosed pursuant to this rule either by the community program or the Department.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0270, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04

410-009-0140

Prohibition Against Retaliation

(1) A community facility, community program or person will not retaliate against any person who reports suspected abuse in good faith, including the adult.

(2) Any community facility, community program or person that retaliates against any person because of a report of suspected abuse or neglect will be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, a penalty up to \$1,000, notwithstanding any other remedy provided by law.

(3) Any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program or person involved in a report against the person making the report or against the adult because of the report and includes but is not limited to:

- (a) Discharge or transfer from the community facility, except for clinical reasons;
- (b) Discharge from or termination of employment;
- (c) Demotion or reduction in remuneration for services; or
- (d) Restriction or prohibition of access to the community facility or its residents.

(4) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0280, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04

410-009-0150

Immunity of Persons Making Reports in Good Faith

(1) Anyone who makes a good faith report and who had reasonable grounds for making the report, will have immunity from civil liability with respect to having made the report.

(2) The reporter will have the same immunity in any judicial proceeding resulting from the report.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: OMPA 87-2004, f. 11-10-04, cert. ef. 12-1-04

410-009-0160

Department Investigation of Alleged Abuse

(1) If determined necessary or appropriate, the Department may conduct an investigation itself rather than allow the community program to investigate the alleged abuse or in addition to the investigation by the community program. Under such circumstances, the community program must receive authorization from the Department before conducting any separate investigation.

(2) All records necessary for the investigation will be available to the Department for inspection and copying. The community facilities and com-

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munity programs must provide the Department access to employees, the adult, and the premises for investigation purposes.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0290, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04

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

Adm. Order No.: PH 33-2004

Filed with Sec. of State: 10-21-2004

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Rules Amended: 333-061-0010, 333-061-0020, 333-061-0030, 333-061-0032, 333-061-0034, 333-061-0036, 333-061-0040, 333-061-0043, 333-061-0050, 333-061-0058, 333-061-0060, 333-061-0064, 333-061-0090, 333-061-0097, 333-061-0205, 333-061-0210, 333-061-0215, 333-061-0220, 333-061-0225, 333-061-0228, 333-061-0230, 333-061-0235, 333-061-0245, 333-061-0250, 333-061-0260, 333-061-0265, 333-061-0270, 333-061-0290

Subject: The changes to the Public Water System/Water Personnel Certification rules above primarily amend the maximum contaminant level (MCL) and monitoring requirements for arsenic that will become effective on January 23, 2006. Also included in these revisions are housekeeping and clarification changes relating to public water system exclusion criteria, chemical MCL compliance, disinfection by products (DBP) reporting/record keeping requirements for disinfection profiling/benchmarking, turbidity monitoring, groundwater under the direct influence of surface water (GWUDI) determination criteria, volatile organic chemicals/synthetic organic chemicals (VOC/SOC) area-wide waiver criteria, coliform sampling plans, best available treatment technologies for arsenic, and Emergency Response Planning. Water Personnel Certification rules have been reordered with numerous clarifications and housekeeping changes, including changing "Small Groundwater" systems to "Small Water" systems to include small water systems under 150 connections that purchase water without adding any treatment.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-061-0010

Scope

(1) These rules apply to all public water systems providing piped water for human consumption as defined by the Act except those water systems which meet all of the conditions prescribed in subsections (1)(a) through (c) or (1)(d) of this rule. This section is intended to exclude water systems at apartment buildings, office buildings, motels, condominiums, restaurants, and other similar premises which obtain water from a public water system and distribute it to residents or customers at those premises without applying a direct charge for the water and without treating the water in order to comply with the maximum contaminant levels covered by these rules and special irrigation districts. A water system is not a Public Water System if it:

(a) Consists only of distribution and storage facilities and does not have any source or treatment facilities installed to comply with the maximum contaminant levels covered by these rules; and

(b) Obtains all of its water from, but is not owned by, a public water system to which these rules apply; and

(c) Does not sell water directly to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce;

or

(e) Is an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system to at least 15 service connections or serving at least 25 individuals daily at least 60 days of the year with only incidental residential or similar use, and where all of the connections comply with the alternative or treated water exclusions prescribed in subsections (2)(b) or (c) of this rule.

(2) These rules also apply to all public water systems providing water for human consumption through constructed conveyances other than pipes after Aug. 5, 1998 to at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days of the year. A water system which meets any of the following "service connection" exclusion criteria and

thereby reduces the number of service connections to fewer than 15 and serving fewer than 25 individuals is not a Public Water System:

(a) Water provided by the supplier to the connection is not used for human consumption;

(b) Alternative water (i.e. bottled water, hauled water, or other source) meeting State and Federal water quality standards, as prescribed in OAR 333-061-030 or 21CFR165, is provided by the supplier to the connection for drinking and cooking;

(c) Treated water meeting State standards, as prescribed in OAR 333-061-0030, applied centrally or at point-of-entry is provided by the supplier, pass-through entity or user to the connection for drinking, cooking and personal hygiene.

Stat. Auth.: ORS 431 & ORS 448

Stats. Implemented: ORS 448.131

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 333-042-0200; HD 2-1983, f. & ef. 2-23-83; HD 20-1983, f. 10-20-83, ef. 11-1-83; HD 9-1989, f. & cert. ef. 11-13-89; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0020

Definitions

As used in these rules, unless the context indicates otherwise:

(1) "Act" means the Oregon Drinking Water Quality Act of 1981 (ORS 448.115-448.990 as amended).

(2) "Action Level" means the concentration of lead or copper in water which determines, in some cases, the treatment requirements that a water system is required to complete.

(3) "Administrator" means the Director of the Department of Human Services or his/her designee.

(4) "Air Gap Separation" means the physical vertical separation between the free flowing discharge end of a potable water supply pipe line and the open or non-pressure receiving vessel.

(5) "Approval" or "Approved" means approved in writing.

(6) "Aquifer" means a water saturated and permeable geological formation, group of formations, or part of a formation that is capable of transmitting water in sufficient quantity to supply wells or springs.

(7) "Aquifer Parameter" means a characteristic of an aquifer, such as thickness, porosity or hydraulic conductivity.

(8) "Aquifer Test" means pumping a well in a manner that will provide information regarding the hydraulic characteristics of the aquifer.

(9) "Atmospheric Vacuum Breaker (AVB)" means a device consisting of an air inlet valve, a check seat and an air inlet port(s).

(10) "Auxiliary Water Supply" means any supply of water used to augment the supply obtained from the public water system which serves the premises in question.

(11) "Average Groundwater Velocity" means the average velocity at which groundwater moves through the aquifer as a function of hydraulic gradient, hydraulic conductivity and porosity.

(12) "AWWA" means the American Water Works Association.

(13) "Backflow" means the flow in the direction opposite to the normal flow caused by backsiphonage or back pressure. Backsiphonage is caused by negative or reduced pressure in the supply piping and back pressure occurs when the potable supply piping is connected to a system or fixture which exceeds the operating pressure of the supply piping.

(14) "Backflow Preventer" means an airgap, AVB, PVBA, SVBA, DCVA or RPBA.

(15) "Backflow Prevention Assembly" means a backflow prevention device such as a pressure vacuum breaker, spill resistant pressure vacuum breaker, a double check valve or a reduced pressure principle device, and the attached shut off valves on the inlet and outlet ends of the device assembled as a complete unit.

(16) "Best Available Technology" or "BAT" means the best technology, treatment techniques, or other means which the EPA finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).

(17) "Bottled Water" means potable water from a source approved by the Department for domestic use which is placed in small, easily transportable containers.

(18) "Calculated Fixed Radius" means a technique to delineate a wellhead protection area, based on the determination of the volume of the aquifer needed to supply groundwater to a well over a given length of time.

(19) "CFR" means the Code of Federal Regulations. Specifically, it refers to those sections of the code which deal with the National Primary and Secondary Drinking Water Regulations.

(20) "Check Valve" means a valve which allows flow in only one direction.

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(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 *Giardia lamblia* inactivation through the treatment plant

(42) "Distribution System" means the network of pipes and other facilities which are used to distribute water from the source, treatment, transmission, or storage facilities to the water user.

(43) "Department" means the Oregon Department of Human Services.

(44) "Domestic or other non-distribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(45) "Dose Equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(46) "Double Check Valve Assembly (DCVA)" means an assembly of two independently acting check valves with shut-off valves on each side of the check valves and test cocks for checking the water tightness of each check valve.

(47) "Drawdown" means the difference, measured vertically, between the static water level in the well and the water level during pumping.

(48) "Drinking Water Protection" means implementing strategies within a drinking water protection area to minimize the potential impact of contaminant sources on the quality of water being used as a drinking water source by a Public Water System.

(49) "Drinking Water Protection Area (DWPA)" means the source area supplying drinking water to a Public Water System. For a surface water-supplied drinking water source the DWPA is all or a specifically determined part of a lake's, reservoir's or stream's watershed that has been certified by the Department of Environmental Quality. For a groundwater-supplied drinking water source the DWPA is the area on the surface that directly overlies that part of the aquifer that supplies groundwater to a well, well field or spring that has been certified by the Department.

(50) "Drinking Water Protection Plan" means a plan, certified by the Department of Environmental Quality according to OAR 340-040-0160 to 340-040-0180, which identifies the actions to be taken at the local level to protect a specifically defined and certified surface water- and/or groundwater drinking water protection area. The plan is developed by the local Responsible Management Authority and/or team and includes a written description of each element, public participation efforts, and an implementation schedule.

(51) "Effective Corrosion Inhibitor Residual" means a concentration sufficient to form a passivating film on the interior walls of a pipe.

(52) "Effective Porosity" means the ratio of the volume of interconnected voids (openings) in a geological formation to the overall volume of the material.

(53) "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.

(54) "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.

(55) "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.

(56) "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

(57) "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

(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 back-

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wash 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 macroorganisms, 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, eg., 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 repre-

sent barriers to flow, e.g. groundwater divides and impermeable geologic barriers.

(77) "Hydrogeologic Mapping" means characterizing hydrogeologic features (e.g. hydrogeologic units, hydrogeologic boundaries, etc.) within an area and determining their location, areal extent and relationship to one another.

(78) "Hydrogeologic Unit" means a geologic formation, group of formations, or part of a formation that has consistent and definable hydraulic properties.

(79) "Impermeable Material" means a material that limits the passage of water.

(80) "Impounding Reservoir" means an uncovered body of water formed behind a dam across a river or stream, and in which water is stored.

(81) "Infiltration Gallery" means a system of perforated pipes laid along the banks or under the bed of a stream or lake installed for the purpose of collecting water from the formation beneath the stream or lake.

(82) "Initial Compliance Period" means the 1993-95 three-year compliance period for systems with 150 or more service connections and the 1996-98 three-year compliance period for systems having fewer than 150 service connections for the contaminants prescribed in OAR 333-061-0036(2)(a)(A)(v), 333-061-0036(3)(a)(J) and (3)(c)(N).

(83) "Interfering Wells" means wells, that because of their proximity and pumping characteristics, and as a result of the aquifer's hydraulic properties, produce drawdown cones that overlap during simultaneous pumping. The result is a lowering of the pumping level in each well below what it would be if that well were pumping by itself.

(84) "Inventory of Potential Contaminant Sources" means the reconnaissance level location of land use activities within the Drinking Water Protection Area that as a category have been associated with groundwater or surface water contamination in Oregon and elsewhere in the United States.

(85) "Lead Free" when used with respect to solders and flux shall mean solders and flux containing not more than 0.2 percent lead, and when used with respect to pipes and fittings shall mean pipes and fittings containing not more than 8.0 percent lead. When used with respect to plumbing fittings and fixtures intended for dispensing water for human consumption shall mean in compliance with standards established in accordance with 42 U.S.C. 300g-6(e) and ANSI/NSF standard 61, section 9.

(86) "Lead Service Line" means a service line made of lead which connects the water main to the building inlet and any pigtail, gooseneck or other fitting which is connected to such lead line.

(87) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(88) "Major Additions or Modifications" means changes of considerable extent or complexity including, but not limited to, projects involving water sources, treatment facilities, facilities for continuous disinfection, finished water storage, pumping facilities, transmission mains, and distribution mains, except main replacements of the same length and diameter.

(89) "Man-made Beta Particle and Photon Emitters" means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69, except the daughter products of Thorium-232, Uranium-235 and Uranium-238.

(90) "Master Plan" means an overall plan which shows the projected development of a distribution system and alternatives for source development.

(91) "Maximum Contaminant Level (MCL)" means the maximum allowable level of a contaminant in water delivered to the users of a public water system, except in the case of turbidity where the maximum allowable level is measured at the point of entry to the distribution system.

(92) "Maximum Residual Disinfectant Level (MRDL)" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.

(93) "New Groundwater Sources" means additional or modified wells and/or springs owned by the Public Water System.

(94) "Non-Transient Non-Community Water System (NTNC)" means a public water system that is not a Community water system and that regularly serves at least 25 of the same persons over 6 months per year.

(95) "Open Interval" means in a cased well, the sum of the length(s) of the screened or perforated zone(s) and in an uncased (open-hole) well, the sum of the thickness(es) of the water-bearing zones or, if undeterminable, 10 percent of the length of the open hole.

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(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) "Pecurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(102) "Pilot Study" means the construction and operation of a scaled down treatment system during a given period of time to determine the feasibility a full scale treatment facility.

(103) "Plug Flow" means movement of water in a pipe such that particles pass through the pipe and are discharged in the same sequence in which they entered.

(104) "Point of Disinfectant Application" is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

(105) "Point-of-Entry Treatment Device" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(106) "Point-of-Use Treatment Device" is a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

(107) "Porous Media Assumption" means the assumption that groundwater moves in the aquifer as if the aquifer were granular in character, i.e. moves directly down-gradient, and the velocity of the groundwater can be described by Darcy's Law.

(108) "Potable Water" See Safe Drinking Water.

(109) "Potential Contaminant Source Inventory" means the determination of the location within the wellhead protection area of activities known to use or produce materials that can contaminate groundwater.

(110) "Potentiometric Surface" means a surface that denotes the variation of hydraulic head in the given aquifer across an area.

(111) "Pressure Vacuum Breaker Assembly (PVBA)" means an assembly consisting of an independently operating, internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve.

(112) "Provisional Delineation" means approximating the wellhead protection area for a well by using the wellhead protection area from another well in the same hydrogeologic setting or by using generalized values for the aquifer characteristics to generate an approximate wellhead protection area for the well. Used only for the purpose of evaluating potential siting of new or future groundwater sources. Not an acceptable way to formally delineate a wellhead protection area.

(113) "Public Health Hazard" means a condition, device or practice which is conducive to the introduction of waterborne disease organisms, or harmful chemical, physical, or radioactive substances into a public water system, and which presents an unreasonable risk to health.

(114) "Public Water System" means a system for the provision to the public of piped water for human consumption, if such system has more than 3 service connections or supplies water to a public or commercial establishment which operates a total of at least 60 days per year, and which is used by 10 or more individuals per day. Public Water System also means a system for the provision to the public of water through constructed conveyances other than pipes to at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days of the year. A public water system is either a "Community water system", a "Transient Non-Community water system", a "Non-Transient Non-Community water system" or a "State Regulated water system".

(115) "Purchasing Water System" means a public water system which obtains its water in whole or in part from another public water system.

(116) "Recharge" means the process by which water is added to a zone of saturation, usually by downward infiltration from the surface.

(117) "Recharge Area" means a land area in which water percolates to the zone of saturation through infiltration from the surface.

(118) "Recovery" means the rise in water level in a well from the pumping level towards the original static water level after pumping has been discontinued.

(119) "Reduced Pressure Backflow Assembly (RPBA)" means a device for preventing backflow which has two check valves, a differential relief valve located between two check valves, two shut-off valves, one on the upstream side and the other on the downstream side of the check valves, and four test cocks for checking the watertightness of the check valves and the operation of the relief valve.

(120) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1/1000 of a rem.

(121) "Repeat Compliance Period" means any subsequent compliance period after the initial compliance period.

(122) "Residual disinfectant concentration" means the concentration of disinfectant measured in mg/l in a representative sample of water.

(123) "Responsible Management Authority" means the Public Water System whose water supply is being protected and any government entity having management, rule or ordinance-making authority to implement wellhead protection management strategies within the wellhead protection area. The Responsible Management Authority is responsible for implementation of the Wellhead Protection Plan and includes cities, counties, special districts, indian tribes, state/federal entities as well as public water systems.

(124) "Safe Drinking Water" means water which has sufficiently low concentrations of microbiological, inorganic chemical, organic chemical, radiological or physical substances so that individuals drinking such water at normal levels of consumption, will not be exposed to disease organisms or other substances which may produce harmful physiological effects.

(125) "Sanitary Survey" means an on-site review of the water source, watershed, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the capability of the water system to produce and distribute safe drinking water.

(126) "Secondary Contaminant" means those contaminants which, at the levels generally found in drinking water, do not present an unreasonable risk to health, but do:

- (a) Have adverse effects on the taste, odor and color of water; and/or
- (b) Produce undesirable staining of plumbing fixtures; and/or
- (c) Interfere with treatment processes applied by water suppliers.

(127) "Secondary Maximum Contaminant Level (SMCL)" means the level of a secondary contaminant which when exceeded may adversely affect the aesthetic quality of the drinking water which thereby may deter public acceptance of drinking water provided by public water systems or may interfere with water treatment methods.

(128) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(129) "Sensitivity" means the intrinsic characteristics of a drinking water source such as depth to the aquifer for groundwater or highly erodible soils in a watershed that increase the potential for contamination to take place if a contaminant source is present.

(130) "Service Connection" means the piping connection by means of which water is conveyed from a distribution main of a public water system to a user's premises. For a Community water system, the portion of the service connection which conveys water from the distribution main to the user's property line, or to the service meter where provided, is under the jurisdiction of the water supplier.

(131) "Single Connection System" means a public water system serving only one installation, such as a restaurant, campground or place of employment.

(132) "Single Family Structure," means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

(133) "Source Water Assessment" means the information compiled by the Department and the DEQ, consisting of the delineation, inventory and susceptibility analyses of the drinking water source, which enable public water systems to develop and implement drinking water protection plans.

(134) "Specific Ultraviolet Absorption (SUVA) at 254 nanometers" means an indicator of the humic content of water as a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nanometers (UV254) by its concentration of dissolved organic carbon (DOC) (in milligrams per liter).

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(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; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0030

Maximum Contaminant Levels and Action Levels

(1) Maximum contaminant levels (MCLs) and Action Levels (ALs) for inorganic chemicals are applicable to all Community and Non-transient Non-community water systems and are listed in **Table 1**. The MCL for Fluoride is applicable only to Community water systems and the MCL for Nitrate is applicable to all water systems. [Table not included. See ED. NOTE.]

(a) Compliance with the maximum contaminant levels for inorganic contaminants is calculated pursuant to OAR 333-061-0036(2)(j).

(b) Violations of secondary contaminant levels for fluoride (2.0 mg/l) require a special public notice. Refer to OAR 333-061-0042(7).

(c) The lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with OAR 333-061-0036(2)(d)(A) through (E) is greater than 0.015 mg/L (i.e., if the "90th percentile" lead level is greater than 0.015 mg/L). The copper action level is exceeded if the concentration of copper in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with OAR 333-061-0036(2)(d)(A) through (E) is greater than 1.3 mg/L (i.e., if the "90th percentile" copper level is greater than 1.3 mg/L).

(A) The 90th percentile lead and copper levels shall be computed as follows: The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken. The number of samples taken during the monitoring period shall be multiplied by 0.9. The contaminant concentration in the numbered sample yielded by this calculation is the 90th percentile contaminant level.

(B) For water systems serving fewer than 100 people that collect 5 samples per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentrations.

(d) The effective date for the 0.010 mg/l arsenic MCL and the 0.0 mg/l arsenic MCLG is January 23, 2006.

(2) Maximum contaminant levels for organic chemicals:

(a) The maximum contaminant levels for synthetic organic chemicals are shown in **Table 2** and apply to all Community and Non-Transient Non-Community water systems: [Table not included. See ED. NOTE.]

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(A) Compliance with MCLs shall be calculated pursuant to OAR 333-061-0036(3)(a)(G) .

(b) The maximum contaminant level for Total Trihalomethanes (TTHM) consists of a calculation of the running annual average of quarterly analyses of the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform) and trichloromethane (chloroform).

(A) The MCL for TTHM is 0.1 mg/l and applies to Community water systems which serve a population of 10,000 or more individuals using surface water or groundwater under the influence of surface water until December 31, 2001 or groundwater until December 31, 2003 and to which a disinfectant (other than UV light) is added in any part of the drinking water treatment process.

(B) Compliance with the MCL shall be calculated pursuant to OAR 333-061-0036 (3)(b)(B) .

(C) The MCL for TTHM and HAA5 compounds applies to all Community and Non-transient Non-community water systems which serve a population of at least 10,000 people using surface water or groundwater under the influence of surface water to which a disinfectant other than UV light is added to the water supply at any point in the drinking water treatment process beginning January 1, 2002, and Community and Non-transient Non-community water systems serving less than 10,000 people using surface water or groundwater under the influence of surface water and all groundwater systems to which a disinfectant other than UV light is added to the water supply at any point in the drinking water treatment process beginning January 1, 2004. The MCLs for these compounds are specified in **Table 3** as follows: [Table not included. See ED. NOTE.] Any system having either a TTHM running annual average greater than or equal to 0.064 mg/l or an HAA5 running annual average greater than or equal to 0.048 mg/l must conduct disinfection profiling as determined by the Department in accordance with the USEPA Disinfection Profiling and Benchmarking Guidance Manual for systems serving at least 10,000 people or the USEPA LT1-ESWTR Disinfection Profiling and Benchmarking Technical Guidance Manual for systems serving less than 10,000 people. For systems serving at least 10,000 people, the profile is based on daily inactivation rate calculations over a period of 12 consecutive months. If the water system uses chloramines, ozone, or chlorine dioxide as a primary disinfectant, the log inactivation for viruses must be calculated and an additional disinfection profile must be developed using a method approved by the Department. The water system must retain the disinfection profile data in graphic form, such as a spreadsheet, which must be available for review by the Department as part of a sanitary survey or other field visit contact.

(D) Water systems serving surface water or groundwater under direct influence required to conduct a disinfection profile by paragraph 2(b)(C) of this rule serving less than 10,000 people must monitor the following parameters to determine the total log inactivation once per week on the same calendar day over twelve consecutive months:

(i) The temperature of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow;

(ii) The pH of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow for systems using chlorine;

(iii) The disinfectant contact time(s) ("T") during peak hourly flow; and; the residual disinfectant concentration(s) ("C") of the water before or at the first customer and prior to each additional point of disinfection during peak hourly flow.

(E) Water systems with only one point of disinfection application must determine one inactivation ration (CT_{calc}/CT_{99.9}) before or at the first customer during peak hourly flow or must determine successive (CT_{calc}/CT_{99.9}) values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow (where the total inactivation ratio equals the sum of the (CT_{calc}/CT_{99.9}) values for each sequence. Water systems using more than one point of disinfection application before the first customer must determine the (CT_{calc}/CT_{99.9}) value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow conditions. Once the total inactivation ratio is calculated, multiply the value by 3 to determine the log inactivation of *Giardia lamblia*. Additional guidance is contained in the USEPA Disinfection Profiling and Benchmarking Guidance Manual for systems serving at least 10,000 people or USEPA LT1-ESWTR Disinfection Profiling and Benchmarking Technical Guidance Manual for systems serving less than 10,000 people.

(F) Any system that installs GAC or membrane filtration technology to comply with this rule may request to the Department for an extension of

up to 24 months past the compliance dates stated in this rule up to December 31, 2003. In granting the extension, the Department must set a compliance schedule and may specify interim compliance measures for the water system. Failure by the water system to meet the schedule or the interim compliance measures constitutes a violation.

(c) The maximum contaminant level for volatile organic chemicals are indicated in **Table 4** and apply to all Community and Non-Transient Non-Community water systems: [Table not included. See ED. NOTE.]

(A) Compliance with MCLs shall be calculated pursuant to OAR 333-061-0036(3)(c)(K) .

(d) When the Department has reason to believe that a water supply has been contaminated by a toxic organic chemical, it will determine whether a public health hazard exists and whether control measures must be carried out;

(e) The Department may establish maximum contaminant levels for additional organic chemicals as deemed necessary when there is reason to suspect that the use of those chemicals will impair water quality to an extent that poses an unreasonable risk to the health of the water users;

(f) Persons who apply pesticides on watersheds above surface water intakes of public water systems shall comply with federal and state pesticide application requirements. (Safe Drinking Water Act (EPA), Clean Water Act (EPA), Federal Insecticide, Fungicide and Rodenticide Act (EPA), ORS 536.220 to 536.360 (Water Resources), ORS 468.700 to 468.990 (DEQ), 527.610 to 527.990 (DOF), 634.016 to 634.992 (Department of Agriculture)). Any person who has reasonable cause to believe that his or her actions have led to organic chemical contamination of a public water system shall report that fact immediately to the water supplier.

(3) Maximum contaminant levels for turbidity are applicable to all public water systems using surface water sources or groundwater sources under the direct influence of surface water in whole or in part. Compliance with MCLs shall be calculated pursuant to OAR 333-061-0036(4).

(a) Beginning January 1, 1992, the maximum contaminant levels for turbidity for systems which do not provide filtration treatment are as follows:

(A) The turbidity level cannot exceed 5 NTU in representative samples of the source water immediately prior to the first or only point of disinfectant application unless:

(i) The Department determines that any such event was caused by circumstances that were unusual and unpredictable; and

(ii) As a result of any such event, there have not been more than two events in the past 12 months the system served water to the public, or more than five events in the past 120 months the system served water to the public, in which the turbidity level exceeded 5 NTU. An "event" is a series of consecutive days during which at least one turbidity measurement each day exceeds 5 NTU. Turbidity measurements must be collected as required by OAR 333-061-0036(4)(a)(B).

(b) Beginning June 29, 1993 or 18 months after failure to meet the requirements of OAR 333-061-0032(1) through (3) whichever is later, the maximum contaminant levels for turbidity in drinking water measured at representative entry point(s) to the distribution system for systems which provide filtration treatment are as follows:

(A) Conventional filtration treatment or direct filtration treatment.

(i) For all systems using conventional or direct filtration treatment serving less than 10,000 people until December 31, 2004, the turbidity level of representative samples of filtered water must be less than or equal to 0.5 NTU in at least 95 percent of the measurements taken each month, measured as specified in OAR 333-061-0036(4)(b), except that if the Department determines that the system is capable of achieving at least 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts at some turbidity level higher than 0.5 NTU in at least 95 percent of the measurements taken each month, the Department may substitute this higher turbidity limit for that system. However, in no case may the Department approve a turbidity limit that allows more than 1 NTU in more than 5 percent of the samples taken each month.

(ii) For all systems using conventional or direct filtration treatment serving less than 10,000 people until December 31, 2004, the turbidity level of representative samples of filtered water, measured as soon after filtration as possible and prior to any storage, must at no time exceed 5 NTU, measured as specified in OAR 333-061-0036(4)(b).

(iii) For systems using conventional filtration or direct filtration treatment serving at least 10,000 people and beginning January 1, 2005 those systems serving less than 10,000 people, the turbidity level of representative samples of a system's filtered water, measured as soon after filtration as possible and prior to any storage, must be less than or equal to 0.3 NTU

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in at least 95% of the measurements taken each month, measured as specified in OAR 333-061-0036(4).

(iv) For systems using conventional filtration or direct filtration treatment serving at least 10,000 people and beginning January 1, 2005 those systems serving less than 10,000 people, the turbidity level of representative samples of a system's filtered water, measured as soon after filtration as possible and prior to any storage, must at no time exceed 1 NTU measured as specified in OAR 333-061-0036(4).

(B) Slow sand filtration.

(i) For systems using slow sand filtration, the turbidity level of representative samples of filtered water, measured as soon after filtration as possible and prior to any storage, must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month, measured as specified in OAR 333-061-0036(4)(b), except that if the Department determines there is no significant interference with disinfection at a higher turbidity level, the Department may substitute this higher turbidity limit for that system.

(ii) The turbidity level of representative samples of filtered water must at no time exceed 5 NTU, measured as specified in OAR 333-061-0036(4)(b).

(C) Diatomaceous earth filtration.

(i) For systems using diatomaceous earth filtration, the turbidity level of representative samples of filtered water, measured as soon after filtration as possible and prior to any storage, must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month, measured as specified in OAR 333-061-0036(4)(b).

(ii) The turbidity level of representative samples of filtered water must at no time exceed 5 NTU, measured as specified in OAR 333-061-0036(4)(b).

(D) Other filtration technologies. Systems using filtration technologies other than those listed in paragraphs (3)(b)(A) through (C) of this rule must meet the maximum contaminant level for turbidity of 1 NTU in at least 95% of the measurements taken each month and at no time exceed 5 NTU, as specified in OAR 333-061-0036(4)(b)(A). The Department may substitute a lower turbidity value(s) if it is determined that the above limit(s) cannot achieve the required level of treatment. The water system must demonstrate to the Department that the alternative filtration technology in combination with disinfection treatment as specified in OAR 333-061-0032 and monitored as specified by OAR 333-061-0036 consistently achieves 99.9% removal and/or inactivation of *Giardia lamblia* cysts and 99.99% removal and/or inactivation of viruses, and for all of those systems serving at least 10,000 people and beginning January 1, 2005 for all of those systems serving less than 10,000 people, 99% removal of *Cryptosporidium* oocysts.

(4) Maximum microbiological contaminant levels for all public water systems are as follows:

(a) The MCL is based on the presence or absence of total coliforms in a sample, rather than coliform density.

(A) For a system which collects 40 or more samples per month, total coliform-positive samples shall not exceed 5.0 percent of the samples collected during a month.

(B) For a system which collects fewer than 40 samples per month total coliform-positive samples shall not exceed more than one sample collected during a month.

(b) Any fecal coliform-positive repeat sample or *E. coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *E. coli*-positive routine sample shall be a violation of the total coliform MCL. Public notification for this potential acute health risk is prescribed in OAR 333-061-0042(2)(a)(A).

(c) All public water systems must determine compliance with the MCL for total coliforms in subsections (4)(a) and (b) of this rule on a monthly basis.

(d) A water system may demonstrate to the Department that a violation of the total coliform MCL is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. The system making the demonstration may use the health effects language of OAR 333-061-0097(4)(d) in the required public notice in addition to the mandatory language of OAR 333-061-0097(4)(a). This demonstration, made by the system in writing and submitted to the Department for review and approval, shall show to the satisfaction of the Department that the system meets the following conditions:

(A) No occurrence of *E. coli* in distribution system samples;

(B) No occurrence of coliforms at the entry point to the distribution system;

(C) The system meets treatment requirements of section 333-061-0032 as applicable;

(D) The system meets the turbidity MCL, if surface water sources are used;

(E) The system maintains a detectable disinfectant residual in the distribution system;

(F) The system has no history of waterborne disease outbreaks;

(G) The system has addressed requirements and recommendations of the previous sanitary survey conducted by the Department, and

(H) The system fully complies with cross connection control program requirements.

(5) Maximum contaminant levels for radionuclides are applicable only to Community water systems and are indicated in Table 5: [Table not included. See ED. NOTE.]

(a) The average annual concentration of beta particle and photon radioactivity from man-made sources shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem per year according to the criteria listed in the National Bureau of Standards Handbook 69 as amended August, 1963. If two or more radionuclides are present, the sum total of their annual dose equivalent to the total body or to any organ shall not exceed 4 millirem/year.

(A) The average annual concentration of tritium assumed to produce a total body dose of 4 mrem/year is 20,000 pCi/L;

(B) The average annual concentration of strontium-90 assumed to produce a bone marrow dose of 4 mrem/year is 8 pCi/L.

(b) Compliance with the MCLs shall be calculated pursuant to OAR 333-061-0036(6)(c).

(c) The effective date for the above MCLs is December 8, 2003.

(6) Contaminant levels for secondary contaminants are applicable to all public water systems. These are indicated in **Table 6**. (Also note OAR 333-061-0036(7)). [Table not included. See ED. NOTE.]

(a) Violations of secondary contaminant levels for fluoride require a special public notice. Refer to OAR 333-061-0042(7).

(b) Violations of maximum contaminant levels for fluoride (4.0 mg/l) require public notification as specified in OAR 333-061-0042(2)(b)(A).

(7) Acrylamide and Epichlorohydrin.

(a) Each public water system must certify annually to the state in writing, using third party certification approved by the state or manufacturer's certification, that when Acrylamide and Epichlorohydrin are used in drinking water systems, the combination, or product, of dose and monomer level does not exceed the levels specified as follows:

(A) Acrylamide: 0.05% dosed at 1 ppm or equivalent.

(B) Epichlorohydrin: 0.01% dosed at 20 ppm or equivalent.

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

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

Stat. Auth.: ORS 431

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 333-042-0210; 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 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 9-1991(Temp), f. & cert. ef. 6-24-91; HD 1-1992, f. & cert. ef. 3-5-92; 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 11-1994, f. & cert. ef. 4-11-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; 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 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0032

Treatment Requirements and Performance Standards for Surface Water, Groundwater Under Direct Influence of Surface Water, and Groundwater

(1) General requirements:

(A) The requirements of this rule apply to all public water systems supplied by a surface water source or a groundwater source under the direct influence of surface water beginning January 1, 1992 or 18 months following determination by the Department of the source to be under the direct influence of surface water, whichever is later, for systems which do not provide filtration treatment, and June 29, 1993 or when filtration is installed, whichever is later, for systems which do provide filtration treatment. Systems which do not provide filtration treatment and fail to meet the requirements of sections (2) and (3) of this rule must install filtration and meet the requirements of sections (4) and (5) of this rule within 18 months of the failure. However, any water system serving at least 10,000 people using surface water without filtration treatment or groundwater source under the direct influence of surface water without filtration treatment and cannot meet the requirements of this rule to remain unfiltered must install filtration treatment as specified by these rules and meet the disinfection requirements in Section (5) of this rule by December 31, 2001. These reg-

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ulations establish criteria under which filtration is required and treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: *Giardia lamblia*, viruses, heterotrophic plate count bacteria, *Legionella*, *Cryptosporidium*, and turbidity. Each public water system with a surface water source or a groundwater source under the direct influence of surface water must provide treatment of that source water that complies with these treatment technique requirements. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(A) At least 99.9 percent (3-log) removal and/or inactivation of *Giardia lamblia* cysts between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer, and

(B) At least 99.99 percent (4-log) removal and/or inactivation of viruses between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

(C) For any public water system serving at least 10,000 people using surface water or ground water under the direct influence of surface water and beginning January 1, 2005 for any public water system serving less than 10,000 people using surface water or ground water under the direct influence of surface water:

(i) At least 99 percent (2-log) removal of *Cryptosporidium* between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer for filtered systems, or *Cryptosporidium* control under the watershed control plan for unfiltered systems;

(ii) Compliance with any applicable disinfection profiling and benchmark requirements as directed by the Department.

(b) A public water system using a surface water source or a ground water source under the direct influence of surface water is considered to be in compliance with the requirements of this rule if:

(A) The system meets the requirements for avoiding filtration in section (2) of this rule and the disinfection requirements in section (3) of this rule, and the disinfection benchmarking requirements of OAR 333-061-0060(1)(e); or

(B) The system meets the filtration requirements in section (4) of this rule and the disinfection requirements in section (5) of this rule and the disinfection benchmarking requirements of OAR 333-061-0060(1)(e).

(c) Water system sources that have been determined to be under the direct influence of surface water according to section (7) of this rule, have 18 months to meet the requirements of this rule. During that time, the system must meet the following Interim Standards:

(A) The turbidity of water entering the distribution system must never exceed 5 NTU. Turbidity measurements must be taken a minimum of once per day. If continuous turbidimeters are in place, measurements should be taken every four hours.

(B) Disinfection must be sufficient to reliably achieve at least 1.0 log inactivation of *Giardia lamblia* cysts prior to the first user. Daily disinfection "CT" values must be calculated and recorded daily, including pH and temperature measurements, and disinfection residuals at the first customer.

(C) Reports must be submitted to the Department monthly as prescribed in 333-061-0040.

(D) If these interim standards are not met, the owner or operator of the water system must notify customers of the failure as required in OAR 333-061-0042(2)(b)(A).

(d) In addition to complying with the requirements of this rule, systems serving at least 10,000 people must also comply with additional requirements specified in OAR 333-061-0030, 0036, and 0040 regarding disinfection by-products.

(2) Requirements for systems without filtration:

(a) A public water system that uses a surface water source or a groundwater source under the direct influence of surface water must meet all of the conditions of this section.

(b) Source water quality conditions.

(A) The fecal coliform concentration must be equal to or less than 20/100 ml, or the total coliform concentration must be equal to or less than 100/100 ml in representative samples of the source water immediately prior to the first or only point of disinfectant application in at least 90 percent of the measurements made for the 6 previous months that the system served water to the public on an ongoing basis. If a system measures both fecal and total coliform, the fecal coliform criterion, but not the total coliform criterion, in this paragraph must be met. All samples must be collected as prescribed in OAR 333-061-0036(4)(a)(A).

(B) The turbidity level cannot exceed the maximum contaminant level prescribed in OAR 333-061-0030(3)(a)(A).

(c) Site-specific conditions. The public water supply must:

(A) Meet the disinfection requirements as prescribed in section (3) of this rule at least 11 of the 12 previous months that the system served water to the public, on an ongoing basis, unless the system fails to meet the requirements during 2 of the 12 previous months that the system served water to the public, and the Department determines that at least one of these failures was caused by circumstances that were unusual and unpredictable.

(B) Maintain a comprehensive watershed control program which minimizes the potential for contamination by *Giardia lamblia* cysts, *Cryptosporidium* oocysts, and viruses in the source water. For groundwater systems under the direct influence of surface water, and at the discretion of the Department, a certified drinking water protection plan (OAR 340-040-0160 to 340-040-00180) that addresses both the groundwater- and surface water components of the drinking water supply may be substituted for a watershed control program. Groundwater systems relying on a drinking water protection plan would still be subject to the requirements of subsection (C) of this rule. The watershed control program shall be developed according to guidelines in OAR 333-061-0075. The public water system must demonstrate through ownership and/or written agreements with landowners within the watershed that it can control all human activities which may have an adverse impact on the microbiological quality of the source water. The system must submit an annual report to the Department identifying any special concerns about the watershed, the procedures used to resolve the concern, current activities affecting water quality, and projections of future adverse impacts or activities and the means to address them. At a minimum, the watershed control program must:

(i) Characterize the watershed hydrology and land ownership;

(ii) Identify watershed characteristics and activities which have or may have an adverse effect on source water quality, and

(iii) Monitor the occurrence of activities which may have an adverse effect on source water quality.

(C) Be subject to an annual on-site inspection of the watershed control program and the disinfection treatment process by the Department. The on-site inspection must indicate to the Department's satisfaction that the watershed control program and disinfection treatment process are adequately designed and maintained including the adequacy limiting the potential contamination by *Cryptosporidium* oocysts. The inspection must include:

(i) A review of the effectiveness of the watershed control program;

(ii) A review of the physical condition of the source intake and how well it is protected;

(iii) A review of the system's equipment maintenance program to ensure there is low probability for failure of the disinfection process;

(iv) An inspection of the disinfection equipment for physical deterioration;

(v) A review of operating procedures;

(vi) A review of data records to ensure that all required tests are being conducted and recorded and disinfection is effectively practiced; and

(vii) Identification of any improvements which are needed in the equipment, system maintenance and operation, or data collection.

(D) Shall not have been identified by the Department as a source of waterborne disease outbreak under the system's current configuration. If such an outbreak occurs, the system must sufficiently modify the treatment process, as determined by the Department, to prevent any future such occurrence.

(E) Comply with the maximum contaminant level (MCL) for total coliform bacteria in OAR 333-061-0030(4) at least 11 months of the 12 previous months that the system served water to the public on an ongoing basis, unless the Department determines that failure to meet this requirement was not caused by a deficiency in treatment of the source water.

(F) Comply with the requirements for trihalomethanes as prescribed in OAR 333-061-0030(2)(b) and 333-061-0036(3)(b) until December 31, 2001. After December 31, 2001, the system must comply with the requirements for total trihalomethanes, haloacetic acids (five), bromate, chlorite, chlorine, chloramines, and chlorine dioxide as specified in OAR 333-061-0036(3)(b).

(d) A public water system which fails to meet any of the criteria in section (2) of this rule is in violation of a treatment technique requirement. The Department can require filtration to be installed where it determines necessary.

(3) Disinfection requirements for systems without filtration. Each public water system that does not provide filtration treatment must provide disinfection treatment as follows:

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(a) The disinfection treatment must be sufficient to ensure at least 99.9 percent (3-log) inactivation of *Giardia lamblia* cysts and 99.99 percent (4-log) inactivation of viruses, every day the system serves water to the public, except any one day each month. Each day a system serves water to the public, the public water system must calculate the CT value(s) from the system's treatment parameters, using the procedure specified in OAR 333-061-0036(4)(a)(C) and determine whether this value(s) is sufficient to achieve the specified inactivation rates for *Giardia lamblia* cysts and viruses. If a system uses a disinfectant other than chlorine, the system must demonstrate to the Department through the use of an approved protocol for on-site disinfection demonstration studies or other information satisfactory to the Department that the system is achieving the required inactivation rates on a daily basis instead of meeting the "CT" values in this rule.

(b) The disinfection system must have either:

(A) Redundant components, including an auxiliary power supply with automatic start-up and alarm to ensure that disinfectant application is maintained continuously while water is being delivered to the distribution system, or

(B) Automatic shut-off of delivery of water to the distribution system whenever there is less than 0.2 mg/l of residual disinfectant concentration in the water. If the Department determines that automatic shut-off would cause unreasonable risk to health or interfere with fire protection, the system must comply with paragraph (3)(b)(A) of this rule.

(c) The residual disinfectant concentration in the water entering the distribution system, measured as specified in OAR 333-061-0036(4)(a)(E), cannot be less than 0.2 mg/l for more than 4 hours.

(d) Disinfectant residuals in the distribution system. The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified in OAR 333-061-0036(4)(a)(F), cannot be undetectable in more than 5 percent of the samples each month, for any two consecutive months that the system serves water to the public.

(4) Requirements for systems that provide filtration:

(a) A public water system that uses a surface water source or a groundwater source under the direct influence of surface water, and does not meet all of the criteria in sections (1), (2), and (3) of this rule for avoiding filtration, violates a treatment technique and must provide treatment consisting of both disinfection, as specified in section (5) of this rule, and filtration treatment which complies with the requirements of either subsection (4)(b), (c), (d), or (e) of this rule by June 29, 1993 or within 18 months of the failure to meet the criteria in section (2) of this rule for avoiding filtration, whichever is later. Failure to install a required treatment by the prescribed dates is a violation of the treatment technique requirements.

(b) Conventional filtration treatment or direct filtration.

(A) Until December 31, 2004 systems serving less than 10,000 people using conventional filtration treatment or direct filtration treatment shall meet the turbidity requirements prescribed in OAR 333-061-0030(3)(b)(A)(i) and (ii).

(B) Systems serving at least 10,000 people using conventional filtration treatment or direct filtration treatment and beginning January 1, 2005 for systems serving less than 10,000 people using conventional filtration treatment or direct filtration treatment shall meet the turbidity requirements as specified in OAR 333-061-0030(3)(b)(A)(iii) and (iv). Prior to this date, those systems serving less than 10,000 people shall meet the turbidity requirements as specified in OAR 333-061-0030(3)(b)(A)(i) and (ii).

(c) Slow sand filtration. Systems using slow sand filtration treatment shall meet the turbidity requirements prescribed in OAR 333-061-0030(3)(b)(B).

(d) Diatomaceous earth filtration. Systems using diatomaceous earth filtration treatment shall meet the turbidity requirements prescribed in OAR 333-061-0030(3)(b)(C).

(e) Other filtration technologies. Systems using other filtration technologies shall meet the turbidity requirements prescribed in OAR 333-061-0030(3)(b)(D).

(5) Disinfection requirements for systems with filtration:

(a) The disinfection treatment must be sufficient to ensure that the total treatment processes of that system achieve at least 99.9 percent (3-log) inactivation and/or removal of *Giardia lamblia* cysts and at least 99.99 percent (4-log) inactivation and/or removal of viruses as determined by the Department.

(b) The residual disinfectant concentration in the water entering the distribution system, measured as specified in OAR 333-061-0036(4)(b)(B), cannot be less than 0.2 mg/l for more than 4 hours.

(c) The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as spec-

ified is OAR 333-061-0036(4)(b)(C) cannot be undetectable in more than 5 percent of the samples each month, for any two consecutive months that the system serves water to the public.

(6) Disinfection requirements for systems using ground water:

(a) Systems using ground water sources shall provide continuous disinfection as prescribed in OAR 333-061-0050(5) under the following conditions:

(A) Then there are consistent violations of the total coliform rule attributed to source water quality;

(B) When a potential health hazard exists as determined by the Department.

(b) When continuous disinfection is required, in addition to the requirements prescribed in OAR 333-061-0050(5)(c)(A) through (C), the facilities shall be designed so that:

(A) The disinfection treatment must be sufficient to ensure that the system achieve at least 99.99 percent (4-log) inactivation and/or removal of viruses as determined by the Department, or;

(B) There is sufficient contact time provided to achieve disinfection under all flow conditions between the point of disinfectant application and the point of first water use:

(i) When chlorine is used as the primary disinfectant, the system shall be constructed to achieve a free chlorine residual of 0.2 mg/l after 30 minutes contact time under all flow conditions before first water use;

(ii) When ammonia is added to the water with chlorine to form a chloramine as the disinfectant, the system shall be constructed to achieve a combined chlorine residual of at least 2.0 mg/l after 3 hours contact time under all flow conditions before first water use.

(7) Determination of groundwater under the direct influence of surface water (GWUDI).

(a) All Public Water Systems using groundwater as a source of drinking water must evaluate their source(s) for the potential of direct influence of surface water if the source(s) is within 500 feet of perennial or intermittent surface water, or greater distances if water quality trends or geologic conditions indicate additional risk, as determined by the Department; and

(A) Have a confirmed or suspected history of coliform bacteria in the source; or

(B) The source has been determined by the Department to be unconfined or the source construction has been determined by the Department to be inadequate with respect to providing protection from surface- or near surface water gaining access to the groundwater source(s);

(C) Sources may be re-evaluated if geologic conditions or water quality trends change over time, as determined by the Department.

(b) Public water systems that are required to evaluate their source(s) for direct influence of surface water must determine if their source(s) is in hydraulic connection with surface water by completing one of the following procedures within a time frame specified by the Department:

(A) Hydrogeologic assessment, including, but not limited to, the following:

(i) Well characteristics: well depth, screened or perforated interval, casing seal placement;

(ii) Aquifer characteristics: thickness of the vadose zone, hydraulic conductivity of the vadose zone and the aquifer, presence of low permeability zones in the vadose zone, degree of connection between the aquifer and surface water;

(iii) Hydraulic gradient: gradient between the aquifer and surface water source during pumping conditions, variation of static water level and surface water level with time;

(iv) Groundwater flow: flow of water from the surface water source to the groundwater source during pumping conditions, estimated time-of-travel for groundwater from the surface water source to the well(s), spring(s), etc.;

(v) The hydrogeologic assessment must be completed by an Oregon registered geologist or other licensed professional with demonstrated experience and competence in hydrogeology in accordance with ORS 672.505 through 672.705.

(B) Water Quality Assessment, including, but not limited to:

(i) Weekly measurements for a period of 12 months, unless otherwise determined by the Department, of precipitation in the source area;

(ii) Weekly measurements for a period of 12 months, unless otherwise determined by the Department, of temperature and either specific conductance or pH of water from the groundwater source(s) and surface water source(s). Other parameters may be substituted with Department approval;

(iii) Measurements of the groundwater source(s) must be conducted on samples collected from the source as opposed to within the distribution system. If the source is a well, it should be pumped for a minimum of 15

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minutes, or until the temperature has stabilized, before the measurements are taken;

(iv) To the extent practical, samples of the surface water source(s) should be collected within 0.5 miles of the point nearest to the groundwater source, and at the same place and same time for each sampling event;

(v) Monitoring equipment must be able to provide data as follows: temperature to the nearest degree centigrade, temperature-compensated specific conductance to the nearest micro-siemens per centimeter and pH to the nearest 0.1 pH unit. Instruments shall be tested for accuracy at least monthly;

(vi) At least quarterly, the water system shall evaluate the precision of their analysis procedure by collecting, during one sampling event, a minimum of six separate and consecutive samples, recording the parameters separately;

(vii) At the end of 12 months, or earlier at the Department's discretion, water systems must submit the water quality data as either a paper copy or as an electronic ASCII file (space delimited). The table must include the source sampled, the date and time of sampling, and the parameter values. The water system must also submit the map showing the location of the surface water sampling point (subsection (7)(b)(B)(iv) of this rule) and the determination of the analytical precision (subsection (7)(b)(B)(vi) of this rule).

(C) Emergency groundwater sources that meet the criteria of subsection (a) can either be pumped continuously and evaluated as prescribed in subsection (b) of this section, or the evaluation can be waived if the a public notice as prescribed in 333-061-0042(2)(a)(H) is issued each time the source is used. The notice must explain that the source has been identified as potentially under the direct influence of surface water, but has not been fully evaluated, and therefore may not be treated sufficiently to inactivate pathogens such as *Giardia lamblia*.

(c) The water quality data submitted by the water system will be analyzed by the Department. The Department will determine if the water system's groundwater source(s) is (are) in hydraulic connection with surface water. Water system sources that are determined as not in hydraulic connection with surface water will be classified as groundwater by the Department. Water system sources will be considered groundwater unless:

(A) The hydrogeologic assessment performed under subsection (7)(b)(A) of this rule indicates that the water system source(s) is (are) in hydraulic connection with surface water;

(B) The statistical analysis of the water quality data performed by the Department indicates:

(i) At least one of the measured parameters exhibits a variation that exceeds either the analytical precision determined under subsection (7)(b)(B)(vi) of this rule, or 10 percent of the mean of the parameter values, which ever is greatest; and

(ii) At least one median monthly value of that parameter is statistically different from the others at a 90% confidence level; and

(iii) A correlation coefficient of at least 0.5 exists for that parameter between the surface water source(s) and the groundwater source that is significant at the 90% confidence level.

(d) Water systems that have been determined to be in hydraulic connection and whose source construction has been determined to be inadequate under subsection (7)(a)(B) of this rule may choose to reconstruct their source according to construction standards as dictated by OAR 333-061-0050. A post-reconstruction water quality assessment (subsection (7)(b)(B) of this rule) must be completed for this source to re-evaluate whether the source is in hydraulic connection with surface water.

(e) Water system sources that have been determined to be in hydraulic connection with surface water must conduct a minimum of two Microscopic Particulate Analyses (MPAs) according to the "Consensus Method for Determining Groundwaters under the Direct Influence of Surface Water Using Microscopic Particulate Analysis (MPA)." One sample is to be taken during a period of high runoff or streamflow, and the other during a period of high demand, with lag time taken into account as determined by the Department.

(f) Scoring of MPAs shall be partially modified from the "Consensus Method" according to Table 8. Scoring for giardia, coccidia, rotifers, and plant debris remains unchanged.

(g) Determinations of water system source classification based on MPAs are made as follows:

(A) If all MPAs have a risk score of less than 10, the water system source is classified as groundwater;

(B) If any MPA risk score is greater than 19, or two or more are greater than 14, the water system source is classified as under the direct influence of surface water;

(C) If at least one MPA risk score is between 10 and 19 or both are between 10 and 15, an additional set of two MPAs must be taken. Determinations are made as follows:

(i) If four or all MPA risk scores are less than 15, the water system source is classified as groundwater;

(ii) If two or more MPA risk scores are greater than 14, or one or more is greater than 19, the water system source is classified as under the direct influence of surface water;

(iii) Two additional MPAs must be taken if only one of four MPA risk scores is greater than 14. Scores will be evaluated according to (g)(C) of this section, or by further evaluation by the Department.

(h) If an infiltration gallery, Ranney well, or dug well has been determined to be classified as groundwater under this rule, the turbidity of the source must be monitored and recorded daily and kept by the water system operator. If the turbidity exceeds 5 NTU or if the surface water body changes course such that risk to the groundwater source is increased, an MPA must be taken at that time. Re-evaluation may be required by the Department.

(i) The Department can determine a groundwater source to be under the direct influence of surface water if the criteria in (7)(a) are true and there are significant or relatively rapid shifts in groundwater characteristics, such as turbidity, which closely correlate to changes in weather or surface water conditions.

(j) If geologic conditions, water quality trends, or other indicators change, the Department can require re-evaluation, as detailed in this section, of a source despite any data previously collected or any determination previously made.

(k) The Department may determine that a source is not under direct influence of surface water based on criteria other than MPAs including the Source Water Assessment, source water protection, and other water quality parameters. The determinations shall be based on the criteria indicating that the water source has a very low susceptibility to contamination by parasites, including *Giardia* and *Cryptosporidium*. The Department may impose additional monitoring or disinfection treatment requirements to ensure that the risk remains low. Table 8:

(8) Requirements for groundwater sources under the direct influence of surface water with a natural filtration credit:

(a) Groundwater sources under the direct influence of surface water are granted the option to evaluate the natural filtration credit only if all MPA risk scores are less than 20. Credit shall be established by a site-specific study that would include an assessment of the ability of the local hydrogeologic setting to provide adequate log reduction in the number of particles in the *Giardia* and *Cryptosporidium* size range between the surface water and the groundwater source, using protocol established or approved by the Department;

(b) In order to be used to meet treatment requirements, natural filtration must be proven to achieve at least 2.0-log removal for *Giardia* and *Cryptosporidium*. 2.0 log removal credit is the maximum given for natural filtration;

(c) Disinfection requirements must be met according to section (5) of this rule. Monitoring must be completed according to OAR 333-061-0036(4)(b).

(9) Disinfection Byproduct Control Requirements:

(a) This rule establishes criteria under which community water systems and Non-transient, Non-community water systems which add a chemical disinfectant to the water in any part of the drinking water treatment process must modify their practices to meet MCLs and MRDLs in OAR 333-061-0030 and 0031, respectively. This rule also establishes the treatment technique requirements for disinfection byproduct precursors. This rule establishes criteria under which transient NCWSs that use chlorine dioxide as a disinfectant or oxidant must modify their practices to meet the MRDL for chlorine dioxide as specified in OAR 333-061-0031.

(b) Compliance dates.

(A) Community and Non-transient Non-community water systems serving at least 10,000 people using surface water or groundwater under the direct influence of surface water must comply with the treatment technique requirements of this rule as well as monitoring and maximum contaminants requirements for disinfection byproduct control as specified in OAR 333-061-0030 and 0036, respectively beginning January 1, 2002. Those systems serving fewer than 10,000 people using surface water or groundwater under the direct influence of surface water and those systems using only groundwater not under the direct influence of surface water must comply with the rules identified in this paragraph beginning January 1, 2004.

(B) Transient Noncommunity water systems serving at least 10,000 people using surface water or groundwater under the direct influence of

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surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the requirements for chlorine dioxide in this rule and OAR 333-061-0030 and 0036 beginning January 1, 2002. Those systems serving fewer than 10,000 persons using surface water or groundwater under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant and systems using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the requirements for chlorine dioxide in this rule and OAR 333-061-0030 and 0036 beginning January 1, 2004.

(c) Water systems may increase residual disinfectant levels in the distribution system of chlorine or chloramines (but not chlorine dioxide) to a level and for a time necessary to protect public health, to address specific microbiological contamination problems caused by circumstances such as, but not limited to, distribution line breaks, storm run-off events, source water contamination events, or cross connection events.

(d) Treatment technique for control of disinfection byproduct precursors. Community and Non-transient Non-community water systems using conventional filtration treatment must operate with enhanced coagulation or enhanced softening to achieve the total organic carbon (TOC) percent removal levels specified in subsection (e) of this section unless the system meets at least one of the alternative compliance criteria listed in paragraph (d)(A) or (d)(B) of this section.

(A) Alternative compliance criteria for enhanced coagulation and enhanced softening systems. Water systems may use the alternative compliance criteria in paragraphs (d)(A)(i) through (vi) of this section in lieu of complying with the performance criteria specified in subsection (e) of this section. Systems must still comply with monitoring requirements specified in OAR 333-061-0036(3)(b)(I).

(i) The system's source water TOC level is less than 2.0 mg/L, calculated quarterly as a running annual average.

(ii) The system's treated water TOC level is less than 2.0 mg/L, calculated quarterly as a running annual average.

(iii) The system's source water TOC is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity is greater than 60 mg/L (as CaCO₃ calculated quarterly as a running annual average; and either the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or prior to the effective date for compliance, the system has made a clear and irrevocable financial commitment not later than the effective date for compliance in this rule to use of technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. Systems must submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the Department for approval not later than the effective date for compliance in this rule. These technologies must be installed and operating not later than June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule will constitute a violation of National Primary Drinking Water Regulations.

(iv) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(v) The system's source water SUVA, prior to any treatment and measured monthly is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(vi) The system's finished water SUVA, measured monthly is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(B) Additional alternative compliance criteria for softening systems. Systems practicing enhanced softening that cannot achieve the TOC removals required by paragraph (e)(B) of this section may use the alternative compliance criteria in paragraphs (d)(B)(i) and (ii) of this section in lieu of complying with paragraph (e) of this section. Systems must still comply with monitoring requirements in specified in OAR 333-061-0036(3)(b)(I).

(i) Softening that results in lowering the treated water alkalinity to less than 60 mg/L (as CaCO₃), measured monthly and calculated quarterly as a running annual average.

(ii) Softening that results in removing at least 10 mg/L of magnesium hardness (as CaCO₃), measured monthly and calculated quarterly as an annual running average.

(e) Enhanced coagulation and enhanced softening performance requirements.

(A) Systems must achieve the percent reduction of TOC specified in paragraph (e)(B) of this section between the source water and the combined filter effluent, unless the Department approves a system's request for alternate minimum TOC removal (Step 2) requirements under paragraph (e)(C) of this rule.

(B) Required Step 1 TOC reductions, specified in **Table 9**, are based upon specified source water parameters. Systems practicing softening are required to meet the Step 1 TOC reductions in the far-right column (Source water alkalinity >120 mg/L) for the specified source water TOC: [Table not included. See ED. NOTE.]

(C) Water systems that cannot achieve the Step 1 TOC removals required by paragraph (e) (B) of this rule due to water quality parameters or operational constraints must apply to the Department, within three months of failure to achieve the TOC removals required by paragraph (e) (B) of this rule, for approval of alternative minimum TOC (Step 2) removal requirements submitted by the water system. If the Department approves the alternative minimum TOC removal (Step 2) requirements, the Department may make those requirements retroactive for the purposes of determining compliance. Until the Department approves the alternate minimum TOC removal (Step 2) requirements, the water system must meet the Step 1 TOC removals contained in paragraph (e)(B) of this rule.

(D) Alternate minimum TOC removal (Step 2) requirements. Applications made to the Department by enhanced coagulation systems for approval of alternative minimum TOC removal (Step 2) requirements under paragraph (e)(C) of this rule must include, as a minimum, results of bench-scale or pilot-scale testing conducted under paragraph (e)(D)(i) of this rule. The submitted bench-scale or pilot scale testing must be used to determine the alternate enhanced coagulation level.

(i) Alternate enhanced coagulation level is defined as coagulation at a coagulant dose and pH as determined by the method described in paragraphs (e)(D)(i) through (v) of this section such that an incremental addition of 10 mg/L of alum (or equivalent amount of ferric salt) results in a TOC removal of less than or equal to 0.3 mg/L. The percent removal of TOC at this point on the "TOC removal versus coagulant dose" curve is then defined as the minimum TOC removal required for the system. Once approved by the Department, this minimum requirement supersedes the minimum TOC removal required by the Table 9 in paragraph (e) (B) of this section. This requirement will be effective until such time as the Department approves a new value based on the results of a new bench-scale and pilot-scale test. Failure to achieve Department-set alternative minimum TOC removal levels is a violation.

(ii) Bench-scale or pilot-scale testing of enhanced coagulation must be conducted by using representative water samples and adding 10 mg/L increments of alum (or equivalent amounts of ferric salt) until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH as specified in **Table 10**: [Table not included. See ED. NOTE.]

(iii) For waters with alkalinities of less than 60 mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below 5.5 before significant TOC removal occurs, the system must add necessary chemicals to maintain the pH between 5.3 and 5.7 in samples until the TOC removal of 0.3 mg/L per 10 mg/L alum added (or equivalent addition of iron coagulant) is reached.

(iv) The system may operate at any coagulant dose or pH necessary, consistent with these rules to achieve the minimum TOC percent removal approved under paragraph (e)(C) of this section.

(v) If the TOC removal is consistently less than 0.3 mg/L of TOC per 10 mg/L of incremental alum dose at all dosages of alum (or equivalent addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The water system may then apply to the Department for a waiver of enhanced coagulation requirements.

(f) Compliance calculations.

(A) Water systems other than those identified in paragraphs (d)(A) or (d)(B) of this section must comply with requirements contained in paragraph (e)(B) or (e)(C) of this section. Systems must calculate compliance quarterly, beginning after the system has collected 12 months of data, by determining an annual average using the following method:

(i) Determine actual monthly TOC percent removal, equal to: $\{1 - (\text{treated water TOC}/\text{source water TOC})\} \times 100$

(ii) Determine the required monthly TOC percent removal (from either Table 9 in paragraph (e)(B) of this section or from paragraph (e)(C) of this section).

(iii) Divide the value in paragraph (f)(A)(i) of this section by the value in paragraph (f)(A)(ii) of this section.

(iv) Add together the results of paragraph (f)(A)(iii) of this section for the last 12 months and divide by 12.

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(v) If the value calculated in paragraph (f)(A)(iv) of this section is less than 1.00, the water system is not in compliance with the TOC percent removal requirements.

(B) Water systems may use the provisions in paragraphs (f)(B)(i) through (v) of this section in lieu of the calculations in paragraph (f)(A)(i) through (v) of this section to determine compliance with TOC percent removal requirements.

(i) In any month that the water system's treated or source water TOC level is less than 2.0 mg/L, the water system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (f)(A)(iii) of this section) when calculating compliance under the provisions of paragraph (f)(A) of this section.

(ii) In any month that a system practicing softening removes at least 10 mg/L of magnesium hardness (as CaCO₃), the water system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (f)(A)(iii) of this section) when calculating compliance under the provisions of paragraph (f)(A) of this section.

(iii) In any month that the water system's source water SUVA, prior to any treatment is less than or equal to 2.0 L/mg-m, the water system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (f)(A)(iii) of this section) when calculating compliance under the provisions of paragraph (f)(A) of this section.

(iv) In any month that the water system's finished water SUVA is less than or equal to 2.0 L/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (f)(A)(iii) of this section) when calculating compliance under the provisions of paragraph (f)(A) of this section.

(v) In any month that a system practicing enhanced softening lowers alkalinity below 60 mg/L (as CaCO₃), the water system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (f)(A)(iii) of this section) when calculating compliance under the provisions of paragraph (f)(A) of this section.

(C) Water systems using conventional treatment may also comply with the requirements of this section by meeting the criteria in paragraph (d)(A) or (B) of this section.

(g) Treatment technique requirements for DBP precursors. Treatment techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems are recognized by the Department for water systems using surface water or groundwater under the direct influence of surface water using conventional treatment as enhanced coagulation or enhanced softening.

(10) Requirements for Water Treatment Plant Recycled Water

(a) Any water system using surface water or groundwater under the direct influence of surface water that uses conventional filtration treatment or direct filtration treatment and that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes must meet the requirements of paragraphs (b) and (c) of this rule and OAR 333-061-0040(2)(i).

(b) A water system must notify the Department in writing by December 8, 2003 if that water system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes. This notification must include, at a minimum, the information specified in paragraphs (b)(A) and (B) of this rule.

(A) A water treatment plant schematic showing the origin of all flows which are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, and liquids from dewatering processes), the hydraulic conveyance used to transport them, and the location where they are re-introduced back into the water treatment plant.

(B) Typical recycle flow in gallons per minute (gpm), the highest observed water treatment plant flow experienced in the previous year (gpm), the design flow for the water treatment plant (gpm), and the operating capacity of the water treatment plant (gpm) that has been determined by the Department where the Department has made such determinations.

(c) Any water system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes must return these flows through the processes of a system's existing conventional filtration treatment plant or direct filtration treatment plant as defined by these rules or at an alternate location approved by the Department by June 8, 2004. If capital improvements are required to modify the recycle location to meet this requirement, all capital improvements must be completed no later than June 8, 2006.

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

Stat. Auth.: ORS 431 & ORS 448

Stats. Implemented: ORS 431.110, 431.150, 448.175 & 448.273

Hist.: 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 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 7-2000, f. 7-1-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-

31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04

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)(d).

(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)(d)(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)(d)(D)(ii) and (F)(iv) by January 1, 1998;

(F) The Department shall review installation of treatment and designate optimal water quality control parameters as prescribed in subsection (3)(l) of this rule by July 1, 1998.

(G) Systems shall operate in compliance with the Department-specified optimal water quality control parameters as prescribed in subsection (3)(m) of this rule and continue to conduct tap sampling.

(b) Medium systems (serving 3,301 to 50,000 persons) shall complete the following corrosion control treatment steps, unless it is deemed to have optimized corrosion control under paragraph (d)(A), (d)(B), or (d)(C) of this section:

(A) Systems shall conduct initial tap sampling beginning July 1, 1992 until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring under OAR 333-061-0036(e)(D)(iv). A system exceeding the lead or copper action level shall recommend optimal corrosion control treatment within six months after it exceeds one of the action levels.

(B) Within 12 months after a system exceeds the lead or copper action level, the Department may require the system to perform corrosion control studies. If the Department does not require the system to perform such studies, the Department shall specify optimal corrosion control treatment within the following time frames:

(i) For medium systems, within 18 months after such system exceeds the lead or copper action level;

(ii) For small systems, within 24 months after such system exceeds the lead or copper action level.

(C) If the Department requires a system to perform corrosion control studies under paragraph (2)(b)(B) of this rule, the system shall complete the studies within 18 months after the Department requires that such studies be conducted.

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(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)(d)(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)(d)(D)(iii) and 333-061-0036(2)(d)(F)(v), respectively. A system shall provide the Department with the following information in order to support a determination under this paragraph:

(i) The results of all test samples collected for each of the water quality parameters in subsection (3)(d) of this rule;

(ii) A report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in subsection (3)(c) of this rule, the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

(iii) A report explaining how corrosion control has been installed and how it is being maintained to insure minimal lead and copper concentrations at consumers' taps; and

(iv) The results of tap water samples collected in accordance with OAR 333-061-0036(2)(d)(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)(d)(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, 2000;

(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 (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)(d)(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)(d)(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;

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(G) Orthophosphate (when an inhibitor containing a phosphate compound is used);

(H) Silicate (when an inhibitor containing a silicate compound is used);

(I) Water temperature.

(e) Any additional chemical treatment approaches considered by the water system shall be evaluated by the water system by conducting appropriate studies and analyses approved by the Department that are equivalent in scope to the studies and analyses required in this section.

(f) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document such constraints with at least one of the following:

(A) Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; and/or

(B) Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(g) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes.

(h) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the Department in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in subsections (3)(c) through (g) of this rule.

(i) Based upon consideration of available information including, where applicable, studies performed under subsection (3)(c) through (g) of this rule and a system's recommended treatment alternative, the Department shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment(s) from among those listed in subsection (3)(c) of this rule. When designating optimal treatment the Department shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(j) The Department shall notify the system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the Department requests additional information to aid its review, the water system shall provide the information.

(k) Each system shall properly install and operate throughout its distribution system the optimal corrosion control treatment designated by the Department under subsection (3)(i) of this rule.

(l) The Department shall evaluate the results of all lead and copper tap samples and water quality parameter samples submitted by the water system and determine whether the system has properly installed and operated the optimal corrosion control treatment designated by the Department in subsection (3)(i) of this rule. Upon reviewing the results of tap water and water quality parameter monitoring by the system, both before and after the system installs optimal corrosion control treatment, the Department shall designate values for the applicable water quality control parameters as listed below and shall be those that the Department determines to reflect optimal corrosion control treatment for the system. The Department may designate values for additional water quality control parameters determined by the Department to reflect optimal corrosion control for the system. The Department shall notify the system in writing of these determinations and explain the basis for its decisions.

(A) A minimum value or a range of values for pH measured at each entry point to the distribution system;

(B) A minimum pH value, measured in all tap samples. Such value shall be 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)(d)(F)(v)-(vii). Compliance shall be determined every six months, as specified under OAR 333-061-0036(2)(d)(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)(d)(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)(d)(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)(d)(D)(ii) and source water monitoring as prescribed in OAR 333-061-0036(2)(d)(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)(d)(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.

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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)(d)(G) through (K). The system is out of compliance with this paragraph if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the Department.

(F) Upon its own initiative or in response to a request by a water system or other interested party, the Department may modify its determination of the source water treatment under paragraph (4)(b)(B) of this rule, or maximum permissible lead and copper concentrations for finished water entering the distribution system under paragraph (4)(b)(D) of this rule. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The Department may modify its determination where it concludes that such change is necessary to ensure that the system continues to minimize lead and copper concentrations in source water. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the Department's decision, and provide an implementation schedule for completing the treatment modifications.

(5) A water system that exceeds the lead action level based on tap water samples collected in accordance with OAR 333-061-0036(2)(d)(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

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information below and be in plain English that can be understood by laypersons:

(A) **INTRODUCTION:** The United States Environmental Protection Agency (EPA) and (insert name of water supplier) are concerned about lead in your drinking water. Some drinking water samples taken from this facility have lead levels above the EPA action level of 15 parts per billion (ppb) or 0.015 milligrams of lead per liter of water (mg/l). Under Federal law we are required to have a program in place to minimize lead in your drinking water by (insert date when corrosion control will be completed for your system). This program includes corrosion control treatment, source water treatment, and public education. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at (insert water system's phone number). This brochure explains the simple steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

(B) **HEALTH EFFECTS OF LEAD:** Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery, porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination — like dirt and dust — that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(C) **LEAD IN DRINKING WATER:**

(i) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

(ii) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, and brass and chrome plated brass faucets. In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

(iii) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon if the water has not been used all day, can contain fairly high levels of lead.

(D) **STEPS YOU CAN TAKE IN THE HOME TO REDUCE EXPOSURE TO LEAD IN DRINKING WATER:**

(i) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in plumbing the more lead it may contain. Flushing the tap means running the cold water faucet for about 15-30 seconds. Although toilet flushing or showering flushes water through a portion of the plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your health. It usually uses less than one gallon of water.

(ii) Do not cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and then heat it.

(iii) The steps described above will reduce the lead concentrations in your drinking water. However, if you are still concerned you may wish to use bottled water for drinking and cooking.

(iv) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(I) (insert the name or title of facility official, if appropriate) at (insert phone number) can provide you with information about your facility's water supply, and

(II) The Department of Human Services, Drinking Water Program at (503) -731-4317 or the (insert the name of the county health department) at (insert phone number) can provide you with information about the health effects of lead.

(c) **Content of broadcast materials.** A water system shall include the following information in all public service announcements submitted under its lead public education program to television and radio stations for 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)(d)(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)(d)(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

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written content information contained in subsection (5)(a) of this rule to every household served by the system.

(iii) With written approval from the Department, systems serving 501 — 3300 persons may limit their public education program by forgoing the newspaper notification requirement specified in paragraph (B)(ii) of this subsection and may limit the distribution of the public education materials required under paragraph (B)(iii) of this subsection to facilities and organizations served by the system and that are most likely to be visited regularly by pregnant women and children as long as the system distributes notices containing the written content information contained in subsection (5)(a) of this rule to every household served by the system;

(iv) All Community systems serving \geq 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)(d)(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; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0036

Sampling and Analytical Requirements

(1) General:

(a) Analyses must be conducted by EPA Methods in accordance with the analytical requirements set forth in 40 CFR 141. Samples analyzed for the purposes of this rule shall be collected after the water has been allowed to flow from the sample tap for a sufficient length of time to assure that the collected sample is representative of water in the distribution system except for samples collected to determine corrosion by-products:

(b) Alternate Analytical Methods:

(A) With the written permission of the Department, an alternate analytical method may be employed;

(B) The use of the alternate analytical method shall not decrease the frequency of sampling required by these rules.

(c) Approved laboratories:

(A) For the purpose of determining compliance with the maximum contaminant levels and the sampling requirements of these rules, sampling results may be considered only if they have been analyzed by a laboratory certified by the Department, except that measurements for turbidity, disinfectant residual, temperature, alkalinity, calcium, conductivity, chlorite, bromide, TOC, SUVA, dissolved organic carbon (DOC), UV254, orthophosphate, silica and pH may be performed on site using approved methods by individuals trained in sampling and testing techniques. Daily chlorite samples measured at the entrance to the distribution system must be performed by a party approved by the Department.

(B) Nothing in these rules shall be construed to preclude the Department or any of its duly authorized representatives from taking samples and from using the results of such samples to determine compliance with applicable requirements of these rules.

(d) Monitoring of purchasing water systems:

(A) When a public water system obtains its water, in whole or in part, from another public water system, the monitoring requirements imposed by these rules on the purchasing water system may be modified by the Department to the extent that the system supplying the water is in compliance with its source monitoring requirements. When a public water system supplies water to one or more other public water systems, the Department may modify monitoring requirements imposed by this rule to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(B) Any modified monitoring shall be conducted pursuant to a schedule specified by the Department and concurred in by the Administrator of the US Environmental Protection Agency.

(e) Water suppliers shall monitor each water source individually for contaminants listed in OAR 333-061-0030 (Maximum Contaminant Levels), except for coliform bacteria, TTHMs and corrosion by-products, at the entry point to the distribution system except as described below. Any such modified monitoring shall be conducted pursuant to a schedule prescribed by the Department.

(A) If the system draws water from more than one source and sources are combined before distribution, the system may be allowed to sample at an entry point to the distribution system during normal operating conditions, where justified, taking into account operational considerations, geologic and hydrologic conditions, and other factors.

(B) If a system draws water from multiple ground water sources which are not combined before distribution, the system may be allowed to sample at a representative source or sources, where justified, taking into account geologic and hydrogeologic conditions, land uses, well construction, and other factors.

(f) Compliance with MCLs shall be based on each sampling point as described in this section. If any point is determined to be out of compliance, the system shall be deemed out of compliance. If an entirely separated portion of a water system is out of compliance, then only that portion of the system shall be deemed out of compliance.

(g) The Department may require additional sampling and analysis for the contaminants included in OAR 333-061-0030 (Maximum Contaminant Levels) when necessary to determine whether an unreasonable risk to health exists. The Department may also require sampling and analysis for additional contaminants not included in OAR 333-061-0030 (Maximum Contaminant Levels) when necessary for public health protection;

(h) Water suppliers and their appointed representatives shall collect water samples from representative locations in the water system as prescribed in this rule and shall employ proper sampling procedures and techniques. Samples submitted to laboratories for analysis shall be clearly identified and shall include the name of the water system, public water system identification number, sampling date, and time, sample location identifying the sample tap, the name of the person collecting the sample and be labeled as follows:

(A) Routine: These are samples collected from established sampling locations within a water system at specified frequencies to satisfy monitoring requirements as prescribed in this rule. These samples are used to calculate compliance with maximum contaminant levels prescribed in OAR 333-061-0030(4);

(B) Repeat: These are samples collected as a follow-up to a routine sample that has exceeded a maximum contaminant level as prescribed in OAR 333-061-0030. Repeat samples are also used to calculate compliance with maximum contaminant levels prescribed in OAR 333-061-0030(4);

(C) Special: These are samples collected to supplement routine monitoring samples and are not required to be reported to the Department. Samples of this type are not considered representative of the water system and are outside the scope of normal quality assurance and control procedures and/or the established compliance monitoring program. Special samples include, but are not limited to, samples taken for special studies, user complaints, post construction/repair disinfection, sources not in service and raw water prior to treatment, except as required by this rule.

(2) Inorganic chemicals:

(a) Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Cyanide, Fluoride, Mercury, Nickel, Selenium and Thallium.

(A) Sampling of water systems for regulated Inorganic Chemicals shall be conducted as follows:

(i) Community and Non-Transient Non-Community Water systems using surface water sources or groundwater sources under the direct influence of surface water solely or a combination of surface and ground water sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system after any application of treatment. Surface water systems shall collect samples annually at each sampling point beginning in the initial compliance period according to the schedule in subsection (2)(k) of this rule. The water system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(ii) Community and Non-Transient Non-Community Water systems using ground water sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system representative of each source after any application of treatment. Ground water systems shall collect samples once every three years at each sampling point beginning in the initial compliance period according to the schedule in subsection (2)(k) of this rule. The water system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(iii) All new Transient Non-Community or State Regulated water systems or existing Transient Non-Community, or State Regulated water systems with new sources developed after January 1, 1993 shall collect one

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sample beginning in the first compliance period starting January 1, 1993. Samples are to be collected at the entry points to the distribution system representative of each source after any application of treatment. Transient Non-Community, or State Regulated water systems existing prior to January 1, 1993 are not required to collect an additional inorganic analysis provided that a least one inorganic analysis per sampling point was collected before January 1, 1993.

(iv) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all the sources being used.

(v) For systems having fewer than 150 service connections the initial compliance period for monitoring for antimony, beryllium, cyanide, nickel and thallium is January 1, 1996 through December 31, 1998.

(B) The Department may allow compositing of samples from a maximum of 5 sampling points, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples is to be done in the laboratory. Composite samples must be analyzed within 14 days of collection. If the concentration in the composite sample is equal to or greater than one-fifth of the MCL of any inorganic chemical listed in section (2) of this rule, then a follow-up sample must be taken for the contaminants which exceeded one-fifth of the MCL within 14 days at each sampling point included in the composite. If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicates must be analyzed and the results reported to the Department within 14 days of collection. If the population served by the water system is >3,300 persons, then compositing can only be allowed within the system. In systems serving £ 3,300 persons, compositing is allowed among multiple systems provided the 5 sample limit is maintained.

(C) Water systems may apply to the Department for a waiver from the monitoring frequencies specified in paragraph (2)(a)(A) of this rule on the condition that the system shall take a minimum of one sample while the waiver is effective and the effective period for the waiver shall not exceed one nine-year compliance cycle.

(i) The Department may grant a waiver provided surface water systems have monitored annually for at least three years and groundwater systems have conducted a minimum of three rounds of monitoring (at least one sample shall have been taken since January 1, 1990), and all analytical results are less than the maximum contaminant levels prescribed in OAR 333-061-0030 for inorganic chemicals. Systems that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed.

(ii) Waivers granted by the Department shall be in writing and shall set forth the basis for the determination. The Department shall review and revise, where appropriate, its determination of the appropriate monitoring frequency when the system submits new monitoring data or where other data relevant to the system's appropriate monitoring frequency become available. In determining the appropriate reduced monitoring frequency, the Department shall consider the reported concentrations from all previous monitoring; the degree of variation in reported concentrations; and other factors which may affect concentrations such as changes in groundwater pumping rates, changes in the system's configuration, changes in the system's operating procedures, or changes in stream flows or characteristics.

(D) Systems which exceed the maximum contaminant levels as calculated in subsection (2)(j) of this rule shall monitor quarterly beginning in the next quarter after the violation occurred. The Department may decrease the quarterly monitoring requirement to the frequencies prescribed in paragraph (2)(a)(A) of this rule when it is determined that the system is reliably and consistently below the maximum contaminant level. Before such a decrease is permitted a groundwater system must collect at least two quarterly samples and a surface water system must collect a minimum of four quarterly samples.

(E) All new systems or systems that use a new source of water must demonstrate compliance with the MCL within a period of time specified by the Department. The system must also comply with the initial sampling frequencies specified by the Department to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in this section.

(b) Sulfate:

(A) Samples of water which is delivered to users shall be analyzed for sulfate as follows:

(i) Community and Non-Transient Non-Community water systems using surface or ground sources shall sample at each point in the distribution system representative of each source after treatment or at entry points

to the distribution system after any application of treatment. Community and Non-Transient Non-Community water systems shall collect one sample at each sampling point beginning in the initial compliance period according to the schedule in subsection (2)(k) of this rule. The water systems must take each sample from the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(ii) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all the sources being used.

(B) Each Community and Non-Transient Non-Community water system may apply to the Department for a waiver from the requirements of paragraph (2)(b)(A) of this rule. The Department may grant a waiver if previous analytical results indicate contamination would not occur, provided this data was collected after January 1, 1990.

(C) The Department may require confirmation samples for positive or negative results.

(D) The Department may allow compositing of samples to reduce the number of samples to be analyzed by the system. Composite samples from a maximum of five sampling points are allowed. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collections. For systems with a population greater than 3,300, the Department may allow compositing at sampling points only within a single system. For systems with a population £ 3,300 the Department may allow compositing among different systems.

(c) Asbestos:

(A) Community and Non-Transient Non-Community water systems regardless of source, shall sample for Asbestos at least once during the initial three-year compliance period of each nine-year compliance cycle starting January 1, 1993 according to the schedule under subsection (2)(k) of this rule unless a water system applies for a waiver and the waiver is granted by the Department.

(B) As reviewed by the Department, if the water system is determined not to be vulnerable to either asbestos contamination in its source water or due to corrosion of asbestos-cement pipe, or both, a waiver may be granted. If granted, the water system will not be required to monitor while the waiver remains in effect. A waiver remains in effect until the completion of the three year compliance period.

(C) A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one sample at a tap served by the asbestos-cement pipe under conditions where asbestos contamination is most likely to occur. Systems exceeding the action levels for lead or copper shall monitor for asbestos once every three years.

(D) A system vulnerable to asbestos contamination due solely to source water shall monitor for asbestos once every nine years. Systems exceeding the action levels for lead or copper shall monitor for asbestos once every three years.

(E) A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(F) A System which exceeds the maximum contaminant levels for asbestos as prescribed in subsection (2)(j) of this rule shall monitor quarterly beginning in the next quarter after the violation occurred. If the Department determines that the system is reliably and consistently below the maximum contaminant level based on a minimum of two quarterly samples for groundwater systems or a minimum of four quarterly samples for surface water systems or combined surface water/groundwater systems, the system may return to the sampling frequency prescribed in paragraph (2)(c)(A) of this rule.

(G) If monitoring data collected after January 1, 1990 are generally consistent with subsection (2)(c) of this rule, then the Health Department may allow the system to use these data to satisfy monitoring requirements for the three-year compliance period beginning January 1, 1993.

(d) Lead and Copper:

(A) Community and Non-Transient, Non-Community water systems shall monitor for lead and copper in tap water as follows: Sample site location:

(i) Each water system shall complete a materials evaluation of its distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this paragraph, and which is sufficiently large to ensure that the water system can collect the number of lead and copper tap samples required in paragraph (C) of this subsection. All sites from which first draw samples are collected shall be selected from this pool of targeted

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sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(ii) In addition to any information that may have been gathered under the special corrosivity monitoring requirements, the water system shall review the sources of information listed below in order to identify a sufficient number of sampling sites:

(I) All plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system;

(II) All existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(iii) The sampling sites selected for a Community water system's sampling pool ("tier 1 sampling sites") shall consist of single family structures that contain copper pipes with lead solder installed from January 1, 1983 through June 30, 1985 or contain lead pipes. When multiple-family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures in its sampling pool.

(iv) Any Community water system with insufficient tier 1 sampling sites shall complete its sampling pool with "tier 2 sampling sites", consisting of buildings, including multiple-family residences that contain copper pipes with lead solder installed from January 1, 1983 through June 30, 1985 or contain lead pipes.

(v) Any Community water system with insufficient tier 1 and tier 2 sampling sites shall complete its sampling pool with "tier 3 sampling sites", consisting of single family structures that contain copper pipes with lead solder installed before 1983. A community water system with insufficient tier 1, tier 2 and tier 3 sampling sites shall complete its sampling pool with representative sites throughout the distribution system. A representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the system.

(vi) The sampling sites selected for a Non-Transient Non-Community water system ("tier 1 sampling sites") shall consist of buildings that contain copper pipes with lead solder installed from January 1, 1983 through June 30, 1985 or contain lead pipes.

(vii) A Non-Transient Non-Community water system with insufficient tier 1 sites that meet the targeting criteria in paragraph (A)(vi) of this subsection shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983. If additional sites are needed, the system shall use representative sites throughout the distribution system. A representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

(viii) Any water system whose sampling pool does not consist exclusively of tier 1 sites shall demonstrate in a letter submitted to the Department under OAR 333-061-0040(1)(f)(A)(i) why a review of the information listed in paragraph (A)(ii) of this subsection was inadequate to locate a sufficient number of tier 1 sites. Any Community water system which includes tier 3 sampling sites in its sampling pool shall demonstrate in such a letter why it was unable to locate a sufficient number of tier 1 and tier 2 sampling sites.

(B) Monitoring requirements for lead and copper in tap water. Sample collection methods:

(i) All tap samples for lead and copper collected in accordance with this paragraph shall be first draw samples.

(ii) Each first-draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First draw samples from residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap. First-draw samples from a non-residential building shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption. First draw samples may be collected by the system or the system may allow residents to collect first draw samples after instructing the residents of the sampling procedures specified in this paragraph. To avoid problems of residents handling nitric acid, acid fixation of first draw samples may be done up to 14 days after the sample is collected. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(iii) A water system shall collect each first draw tap sample from the same sampling site from which it collected a previous sample. If, for any

reason, the water system cannot gain entry to a sampling site in order to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

(C) Monitoring requirements for lead and copper in tap water. Number of samples: Water systems shall collect at least one sample during each monitoring period specified in paragraph (D) of this subsection from the number of sites listed in the first column below ("standard monitoring"). A system conducting reduced monitoring under paragraph (D)(iv) of this subsection shall collect at least one sample from the number of sites specified in the second column below during each monitoring period specified in paragraph (D)(iv) of this subsection. Such reduced monitoring sites shall be representative of the sites required for standard monitoring. The Department may specify sampling locations when a system is conducting reduced monitoring. [Table not included. See ED. NOTE.]

(D) Monitoring requirements for lead and copper in tap water. Timing of monitoring:

(i) Initial tap monitoring requirements:

(I) All large systems shall monitor during two consecutive six-month periods.

(II) All small and medium-size systems shall monitor during each six-month monitoring period until the system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements specified in OAR 333-061-0034(2), in which case the system shall continue monitoring in accordance with paragraph (D)(ii) of this subsection, or the system meets the lead and copper action levels during two consecutive six-month monitoring periods, in which case the system may reduce monitoring in accordance with paragraph (D)(iv) of this subsection.

(ii) Monitoring after installation of corrosion control and source water treatment.

(I) Any large system which installs optimal corrosion control treatment pursuant to OAR 333-061-0034(2)(a)(D) shall monitor during two consecutive six-month monitoring periods by the date specified in OAR 333-061-0034(2)(a)(E).

(II) Any small or medium-size system which installs optimal corrosion control treatment pursuant to OAR 333-061-0034(2)(b)(E) shall monitor during two consecutive six-month monitoring periods by the date specified in OAR 333-061-0034(2)(b)(F).

(III) Any system which installs source water treatment pursuant to OAR 333-061-0034(4)(a)(C) shall monitor during two consecutive six-month monitoring periods by the date specified in OAR 333-061-0034(4)(a)(D).

(iii) Monitoring after the Department specifies water quality parameter values for optimal corrosion control. After the Department specifies the values for water quality control parameters under OAR 333-061-0034(3)(I), the system shall monitor during each subsequent six-month monitoring period, with the first monitoring period to begin on the date the Department specifies the optimal values.

(iv) Reduced monitoring:

(I) A small or medium-size water system that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with paragraph (C) of this subsection, and reduce the frequency of sampling to once per year.

(II) Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the Department during each of two consecutive six-month monitoring periods may request that the Department allow the system to reduce the frequency of monitoring to once per year and to reduce the number of lead and copper samples in accordance with paragraph (C) of this subsection. The Department shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The Department shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(III) A small or medium-size water system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the Department during three consecutive years of monitoring may request that the Department allow the system to reduce the frequency of monitoring from annually to once every three

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years. The Department shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The Department shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(IV) A water system that reduces the number and frequency of sampling shall collect these samples from representative sites included in the pool of targeted sampling sites identified in paragraph (A) of this subsection. Systems sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or September. The Department may approve a different period for conducting the lead and copper tap sampling for systems collecting a reduced number of samples. Such a period shall be no longer than four consecutive months and must represent a time of normal operation where the highest levels of lead are most likely to occur. For a Non-transient Non-community water system that does not operate during the months of June through September, and for which the period of normal operation where the highest levels of lead are most likely to occur is not known, the Department shall designate a period that represents a time of normal operation for the system. Community and Non-transient Non-community systems monitoring annually or triennially that have been collecting samples during the months of June through December and that receive Department approval to alter their sample collection period must collect their next round of samples during a time period that ends no later than 21 months or 45 months, respectively, after the previous round of sampling. Subsequent rounds of sampling must be collected annually or triennially as required in this subsection.

(V) A small or medium-size water system subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling in accordance with paragraph (D)(iii) of this subsection and collect the number of samples specified for standard lead and copper monitoring in paragraph (C) of this subsection and shall also conduct water quality parameter monitoring in accordance with paragraphs (F)(iii), (iv) or (v) of this subsection, as appropriate, during the period in which the lead or copper action level was exceeded. Any such system may resume annual monitoring for lead and copper at the tap at the reduced number of sites after it has completed two subsequent consecutive six-month rounds of monitoring that meet the requirement of subparagraph (iv)(I) of this paragraph and/or may resume triennial monitoring for lead and copper at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria prescribed in subparagraphs (iv)(III) or (iv)(VI) of this paragraph. Any water system subject to reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality control parameters specified by the Department for more than nine days in any six-month period specified in paragraph (F)(v) of this subsection shall conduct tap water sampling for lead and copper at the frequency specified in paragraph (D)(iii) of this subsection, collect the number of samples specified for standard monitoring, and shall resume monitoring for water quality parameters within the distribution system in accordance with paragraph (F)(v) of this subsection. Such a system may, with written Department approval, resume reduced annual monitoring for lead and copper at the tap after it has completed two subsequent six-month rounds of tap lead and copper monitoring that meet the criteria specified in subparagraph (iv)(II) of this paragraph. Such a system, with written Department approval, may resume reduced triennial monitoring for lead and copper at the tap if it meets the criteria specified in subparagraphs (iv)(III) and (VI) of this paragraph. Such a system may reduce the number and frequency of water quality parameter distribution tap samples required in accordance with paragraph (F)(vi)(I) and (II) of this subsection. Such a system may not resume triennial monitoring for water quality parameters distribution tap samples until it demonstrates that it has re-qualified for triennial monitoring.

(VI) Any water system that demonstrates for two consecutive 6-month monitoring periods that the 90th percentile lead level is less than or equal to 0.005 mg/l and the 90th percentile copper level is less than or equal to 0.65 mg/l may reduce the number of samples in accordance with paragraph (C) of this subsection and reduce the frequency of sampling to once every three calendar years.

(VII) Any water system subject to a reduced monitoring frequency that either adds a new source of water or changes any water treatment shall inform the Department in writing. The Department may require the system to resume standard monitoring or take other appropriate steps such as increased water quality parameter monitoring or re-evaluation of its corrosion control treatment given the potentially different water quality considerations.

(E) Monitoring requirements for lead and copper in tap water. Additional monitoring by systems: The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the Department in making any determinations (i.e., calculating the 90th percentile lead or copper level) under this paragraph. The Department may invalidate lead and copper tap water samples as follows:

(i) The Department may invalidate a lead or copper tap sample if at least one of the following conditions is met. The decision and the rationale for the decision must be documented in writing by the Department. A sample invalidated by the Department does not count toward determining lead or copper 90th percentile levels or toward meeting the minimum monitoring requirements:

(I) The laboratory establishes that improper sample analysis caused erroneous results; or

(II) A site that did not meet the site selection criteria; or

(III) The sample container was damaged in transit; or

(IV) There is substantial reason to believe that the sample was subject to tampering.

(ii) The system must report the results of all samples to the Department and all supporting documentation for samples the system believes should be invalidated.

(iii) The Department may not invalidate a sample solely on the grounds that a follow-up sample result is higher or lower than that of the original sample.

(iv) The water system must collect replacement samples for any samples invalidated if, after the invalidation of one or more samples, the system has too few samples to meet the minimum requirements. Any such replacement samples must be taken as soon as possible, but no later than 20 days after the date the Department invalidates the sample. The replacement samples shall be taken at the same locations as the invalidated samples or, if that is not possible, at locations other than those already used for sampling during the monitoring period.

(F) Monitoring requirements for water quality parameters. All large water systems and all medium and small water systems that exceed the lead or copper action levels shall monitor water quality parameters in addition to lead and copper as follows:

(i) General Requirements. Sample collection methods:

(I) Tap samples shall be representative of water quality throughout the distribution system taking into account the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Tap sampling under this section is not required to be conducted at taps targeted for lead and copper sampling, however, established coliform sampling sites may be used to satisfy these requirements.

(II) Samples collected at the entry point(s) to the distribution system shall be from locations representative of each source after treatment. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all sources being used.

(ii) General requirements. Number of samples:

(I) Systems shall collect two tap samples for applicable water quality parameters during each monitoring period specified under paragraphs (F)(iii) through (vi) of this subsection from the following number of sites. [Table not included. See ED. NOTE.]

(II) Except as provided in subparagraph (iv)(III) of this paragraph, systems shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in paragraph (F)(iii) of this subsection. During each monitoring period specified in paragraphs (F)(iv) through (vi) of this subsection, systems shall collect one sample for each applicable water quality parameter at each entry point to the distribution system.

(iii) Initial Sampling. All large water systems shall measure the applicable water quality parameters as specified below at taps and at each entry point to the distribution system during each six-month monitoring period specified in paragraph (D)(i) of this subsection. All small and medium-size systems shall measure the applicable water quality parameters at the locations specified below during each six-month monitoring period specified in paragraph (D)(i) of this subsection during which the system exceeds the lead or copper action level:

(I) At taps: pH, alkalinity, orthophosphate (when an inhibitor containing a phosphate compound is used), silica (when an inhibitor containing a silicate compound is used), calcium, conductivity, and water temperature.

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(II) At each entry point to the distribution system: all of the applicable parameters listed in paragraph (F)(iii)(I) above.

(iv) Monitoring after installation of corrosion control. Any large system which installs optimal corrosion control treatment pursuant to OAR 333-061-0034(2)(a) (D) shall measure the water quality parameters at the locations and frequencies specified below during each six-month monitoring period specified in paragraph (D)(ii)(I) of this subsection. Any small or medium-size system which installs optimal corrosion control treatment shall conduct such monitoring during each six-month monitoring period specified in paragraph (D)(ii)(II) of this subsection in which the system exceeds the lead or copper action level.

(I) At taps, two samples for: pH, alkalinity, orthophosphate (when an inhibitor containing a phosphate compound is used), silica (when an inhibitor containing a silicate compound is used), calcium (when calcium carbonate stabilization is used as part of corrosion control).

(II) Except as provided in subparagraph (iv)(III) of this paragraph, at each entry point to the distribution system, at least one sample, no less frequently than every two weeks (bi-weekly) for: pH; when alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and when a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable).

(III) Any ground water system can limit entry point sampling to those entry points that are representative of water quality and treatment conditions throughout the system. If water from untreated ground water sources mixes with water from treated ground water sources, the system must monitor for water quality parameters both at representative entry points receiving treatment and no treatment. Prior to the start of any monitoring, the system shall provide to the Department written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(v) Monitoring after Department specifies water quality parameter values for optimal corrosion control. After the Department specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under OAR 333-061-0034(3)(I), all large systems shall measure the applicable water quality parameters in accordance with paragraph (F)(iv) of this subsection and determine compliance every six months with the first six-month period to begin on the date the Department specifies optimal water quality parameter values. Any small or medium-size system shall conduct such monitoring during each monitoring period specified in this paragraph in which the system exceeds the lead or copper action level. For any such small and medium-size system that is subject to a reduced monitoring frequency pursuant to paragraph (D)(iv) of this subsection at the time of the action level exceedance, the end of the applicable six-month period under this paragraph shall coincide with the end of the applicable monitoring period under paragraph (D)(iv) of this subsection. Compliance with Department-designated optimal water quality parameter values shall be determined as specified under OAR 333-061-0034(3)(m).

(vi) Reduced monitoring:

(I) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under paragraph (D) of this subsection shall continue monitoring at the entry point(s) to the distribution system as specified in paragraph (F)(iv)(II) of this subsection. Such system may collect two tap samples for applicable water quality parameters from the following reduced number of sites during each six-month monitoring period. System Size # People Served – Reduced # of Sites for Water Quality Parameters: [Table not included. See ED. NOTE.]

(II) Any water system that maintains the minimum values or maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Department under OAR 333-061-0034(3)(I) during three consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in paragraph (F)(vi)(I) of this subsection from every six months to annually. Any water system that maintains the minimum values or maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Department under OAR 333-061-0034(3)(I) during three consecutive years of annual monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters from annually to every three years.

(III) A water system may reduce the frequency with which it collects tap samples for applicable water quality parameters to every three years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to 0.005 mg/l, that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/l, and that it also has maintained the range of values for water quality parameters reflecting optimal corrosion control treatment specified by the Department.

(IV) A water system that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

(V) Any water system subject to reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the Department under OAR 333-061-0034(3)(I) for more than nine days in any six-month period shall resume distribution system tap water sampling in accordance with the number and frequency requirements in paragraph (F)(v) of this subsection. Such a system may resume annual monitoring for water quality parameters at the tap at the reduced number of sites after it has completed two subsequent consecutive six-month rounds of monitoring that meet the criteria specified in paragraph (F)(v) of this subsection and/or may resume triennial monitoring at the reduced number of sites after it demonstrates through subsequent annual rounds that it meets the criteria of subparagraphs (vi)(I) and (II) of this paragraph.

(vii) Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the Department in making any determinations.

(G) Monitoring requirements for lead and copper in source water. Sample location, collection methods, and number of samples:

(i) A water system that fails to meet the lead or copper action level on the basis of tap samples collected in accordance with paragraphs (A) through (E) of this subsection shall collect lead and copper source water samples in accordance with the following requirements regarding sample location, number of samples, and collection methods:

(I) Ground water systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant;

(II) Surface water systems shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source, after treatment. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant; Surface water systems include systems with a combination of surface and ground sources;

(III) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods when water is representative of all sources being used.

(ii) Where the results of sampling indicate an exceedance of maximum permissible source water levels established under OAR 333-061-0034(4)(b)(D) the Department may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a Department-required confirmation sample is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged in determining compliance with the Department-specified maximum permissible levels. Any sample value below the detection limit shall be considered to be zero. For lead any value above the detection limit but below the Practical Quantitation Level (PQL) (0.005 mg/l) shall either be considered as the measured value or be considered one-half the PQL (0.0025 mg/l). For copper any value above the detection limit but below the PQL (0.050 mg/l) shall either be considered as the measured value or be considered one-half the PQL (0.025 mg/l).

(H) Monitoring requirements for lead and copper in source water. Monitoring frequency after system exceeds tap water action level. Any system which exceeds the lead or copper action level at the tap shall collect one source water sample from each entry point to the distribution system within six months after the exceedance.

(i) Monitoring frequency after installation of source water treatment. Any system which installs source water treatment pursuant to OAR 333-061-0034(4)(a)(C) shall collect an additional source water sample from each entry point to the distribution system during two consecutive six-

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month monitoring periods by the deadline specified in OAR 333-061-0034(4)(a)(D).

(ii) Monitoring frequency after Department specifies maximum permissible source water levels or determines that source water treatment is not needed.

(I) A system shall monitor at the frequency specified below in cases where the Department specifies maximum permissible source water levels under OAR 333-061-0034(4)(b)(D) or determines that the system is not required to install source water treatment under OAR 333-061-0034(4)(b)(B). A water system using only groundwater shall collect samples once during the three-year compliance period in effect when the applicable Department determination is made. Such systems shall collect samples once during each subsequent compliance period. A water system using surface water (or a combination of surface and groundwater) shall collect samples once during each year, the first annual monitoring period to begin on the date on which the applicable Department determination is made.

(II) A system is not required to conduct source water sampling for lead and/or copper if the system meets the action level for the specific contaminant in tap water samples during the entire source water sampling period applicable to the system under paragraph (H)(ii)(I) of this subsection.

(iii) Reduced monitoring frequency:

(I) A water system using only groundwater which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the Department in OAR 333-061-0034(4)(b)(D) during at least three consecutive compliance periods under paragraph (H)(ii)(I) of this subsection or for which the Department has determined that source water treatment is not needed and the system demonstrates during at least three consecutive compliance periods under paragraph (H)(ii)(I) of this subsection that the concentration of lead in source water was ≤ 0.005 mg/l and the concentration of copper in source water was ≤ 0.65 mg/l may reduce the monitoring frequency for lead and copper in source water to once during each nine-year compliance cycle.

(II) A water system using surface water (or a combination of surface and ground waters) which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the Department in OAR 333-061-0034(4)(b)(D) for at least three consecutive years or for which the Department has determined that source water treatment is not needed and the system demonstrates that during at least three consecutive years the concentration of lead in source water was less than or equal to ≤ 0.005 mg/l and the concentration of copper in source water was less than or equal to ≤ 0.65 mg/l may reduce the monitoring frequency in paragraph (H)(ii)(I) of this subsection to once during each nine-year compliance cycle.

(III) A water system that uses a new source of water is not eligible for reduced monitoring for lead and/or copper until concentrations in samples collected from the new source during three consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified by the Department in OAR 333-061-0034(4)(a)(E).

(e) Nitrate:

(A) Community and Non-Transient Non-Community water systems using surface water sources or groundwater sources under the direct influence of surface water shall monitor for Nitrate quarterly beginning January 1, 1993. The Department may allow a surface water system to reduce the sampling frequency to annually provided that all analytical results from four consecutive quarters are less than 50% of the MCL. A surface water system shall return to quarterly monitoring if any one sample is $\geq 50\%$ of the MCL.

(B) Community and Non-Transient Non-Community water systems using groundwater sources shall monitor for Nitrate annually beginning January 1, 1993. The Department shall require quarterly monitoring for at least one year following any one sample in which the concentration is $\geq 50\%$ of the MCL. The system may return to annual monitoring after four consecutive quarterly samples are found to be reliably and consistently below the MCL.

(C) Transient Non-Community and State Regulated water systems shall monitor for Nitrate annually beginning January 1, 1993.

(D) After the initial round of quarterly sampling is completed, each Community and Non-Transient Non-Community water system which is monitoring annually shall take subsequent samples during the quarter(s) which previously resulted in the highest analytical result.

(f) Nitrite:

(A) Community, Non-Transient Non-Community, and Transient Non-Community water systems shall collect one sample at each sampling point

for Nitrite during the compliance period beginning January 1, 1993. The Department shall require quarterly monitoring for at least one year following any one sample in which the concentration is $\geq 50\%$ of the MCL. The system may return to annual monitoring after four consecutive quarterly samples are found to be reliably and consistently below the MCL.

(B) After the initial sample, all systems where analytical results for Nitrite are $< 50\%$ of the MCL, shall monitor once during each subsequent compliance period.

(C) Systems which are monitoring annually shall take each subsequent sample during the quarter(s) which previously resulted in the highest analytical result.

(g) Sodium:

(A) Samples of water which is delivered to users shall be analyzed for Sodium as follows:

(i) Community and Non-Transient Non-Community water systems, surface water sources, once per year for each source;

(ii) Community and Non-Transient Non-Community water systems, ground water sources, once every three years for each source.

(B) The water supplier shall report to the Department the results of the analyses for Sodium as prescribed in rule 333-061-0040. The Department shall notify local health officials of the test results.

(h) Confirmation Samples:

(A) Where the results of sampling for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium exceed the MCL prescribed in OAR 333-061-0030 for inorganic chemicals, the Department may require one additional sample to be taken as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point.

(B) Where the results of sampling for nitrate or nitrite exceed the MCL prescribed in OAR 333-061-0030 for inorganic chemicals, the system is required to collect one additional sample within 24 hours of notification of the results of the initial sample at the same sampling point. Systems unable to comply with the 24-hr sampling requirement must initiate consultation with the Department as soon as practical, but no later than 24 hours after the system learns of the violation and must immediately notify their users as prescribed in OAR 333-061-0042(2)(a)(B), and collect one additional sample within two weeks of notification of the results of the initial sample.

(C) If a confirmation sample required by the Department is taken for any contaminant then the results of the initial and confirmation sample shall be averaged. The resultant average shall be used to determine the system's compliance as prescribed in subsection (2)(j) of this rule.

(i) The Department may require more frequent monitoring than specified in subsections (2)(a) through (g) of this rule or may require confirmation samples for positive and negative results. Systems may apply to the Department to conduct more frequent monitoring than is required in this section.

(j) Compliance with the inorganic MCLs as listed in Table 1 shall be determined based on the analytical result(s) obtained at each sampling point as follows:

(A) For systems which are conducting monitoring at a frequency greater than annual, compliance with the MCLs for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium is determined by a running annual average at any sampling point. If the average at any sampling point rounded to the same number of significant figures as the MCL for the substance in question is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample with results below the detection limit specified for the approved EPA analytical method shall be calculated at zero for the purpose of determining the annual average. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

(B) For systems which are monitoring annually, or less frequently, the system is out of compliance with the MCLs for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium if the level of the contaminant at any sampling point is greater than the MCL. If confirmation samples are required by the Department, the determination of compliance will be based on the average of the initial MCL exceedance and the confirmation sample. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

(C) Compliance with MCLs for nitrate and nitrite is determined based on one sample if the levels of these contaminants are below the MCLs. If the levels of nitrate and/or nitrite exceed the MCLs in the initial sample, a

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confirmation sample is required in accordance with paragraph (2)(h)(B) of this rule and compliance shall be determined based on the average of the initial and confirmation samples.

(D) If the results of an analysis as prescribed in this rule indicate the level of any contaminant exceeds the maximum contaminant level, the water supplier shall report the analysis results to the Department within 48 hours as prescribed in OAR 333-061-0040 and initiate the public notice procedures as prescribed by OAR 333-061-0042.

(k) All Community and Non-Transient Non-Community water systems shall monitor according to the following schedule:

Population – Begin Initial Monitoring – Complete Initial Monitoring by
300 or More – January 1, 1993 – December 31, 1993
100 to 299 – January 1, 1994 – December 31, 1994
Less than 100 – January 1, 1995 – December 31, 1995

(3) Organic chemicals:

(a) Alachlor, Atrazine, Benzo(a) pyrene, Carbofuran, Chlordane, Dalapon, Dibromochloropropane, Dinoseb, Dioxin(2,3,7,8-TCDD), Diquat, Di(2-ethylhexyl) adipate, Di(2-ethylhexyl) phthalate, Endothall, Endrin, Ethylene dibromide, Glyphosate, Heptachlor, Heptachlor epoxide, Hexachlorobenzene, Hexachlorocyclopentadiene, Lindane(BHC-g), Methoxychlor, Oxamyl(Vydate), Picloram, Polychlorinated biphenyls, Pentachlorophenol, Simazine, Toxaphene, 2,4-D and 2,4,5-TP Silvex.

(A) Samples of water which is delivered to users shall be analyzed for regulated synthetic organic chemicals (SOC) as follows:

(i) Community and Non-Transient Non-Community water systems using surface, ground water under the direct influence of surface water or ground sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system after any application of treatment. Community and Non-Transient Non-Community water systems shall collect four consecutive quarterly samples at each sampling point beginning with the initial compliance period starting January 1, 1993. The water systems must take each sample from the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. New wells in an existing wellfield or within an existing drinking water protection area may be eligible for a reduction in initial monitoring from four consecutive quarterly samples to one sample if no detections occur and if, based on the system's source assessment, the Department determines that the new well is producing from the same and only the same aquifer or does not significantly modify the existing drinking water protection area.

(ii) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all the sources being used.

(iii) If the initial analysis does not detect any contaminant listed in subsection (3) (a) of this rule, then monitoring at each sampling point may be reduced to:

(I) Two consecutive quarterly samples in one year during each repeat compliance period for systems serving more than 3300 population; or

(II) One sample in each repeat compliance period for systems serving ≤ 3300 population; or

(III) Once every 6 years for all SOCs, if the system has a state certified Drinking Water Protection Plan or for those SOCs determined to be "used" and for which that portion of the aquifer identified by the drinking water protection area delineation has been determined to be of "moderate" susceptibility according to the Department's Use and Susceptibility Protocol. Information from the system's Source Water Assessment can be used in this determination; or

(IV) Once every 9 years for those SOCs in an analytical method group determined to be "not used" in the delineated drinking water protection area, or for those SOCs determined to be "used" if that portion of the aquifer identified by the drinking water protection area delineation has been determined to be of "low susceptibility" according to the Department's Use and Susceptibility Waiver Document. Information from the system's Source Water Assessment can be used in this determination.

(iv) If a water system has two or more wells that have been determined by the Department to constitute a "wellfield" as specified in OAR 333-061-0058, the system must sample at the entry point(s) designated by the Department.

(B) Each Community and Non-Transient Non-Community water system may apply to the Department for a waiver from the requirements of paragraph (3)(a)(A) of this rule. Each water system can receive specific guidance in obtaining a waiver from the Use and Susceptibility Waiver Guidance Document developed by the Department. A waiver must be in place prior to the year in which the monitoring is to be accomplished, and

the water system must reapply for a waiver for Organics monitoring each compliance period.

(i) The water system shall use the drinking water protection area as delineated during the Source Water Assessment according to procedures described in the Use and Susceptibility Waiver Guidance Document.

(ii) The Use Waiver criteria as described in the Use and Susceptibility Waiver Guidance Document shall take into consideration but is not limited to the use, storage, distribution, transport and disposal of the contaminant within the delineated recharge or watershed area.

(iii) The Susceptibility Waiver criteria as described in the Use and Susceptibility Waiver Guidance Document shall address only those contaminants that remain after the use waiver process has been completed. The Susceptibility Waiver criteria shall take into consideration but is not limited to the history of bacteria and/or nitrate contamination, well construction, agricultural management practices, infiltration potential, and contaminant mobility and persistence.

(iv) Water systems which qualify for use and susceptibility waivers shall follow the monitoring requirements as directed in the Use and Susceptibility Waiver Guidance Document.

(v) The Use and Susceptibility Waiver Guidance Document is made a part of this rule and shall take into consideration the Wellhead Protection Program and shall be updated with new methods and procedures as they become available.

(vi) The Department may establish area-wide waivers based on historical monitoring data, land use activity, and the results of "Source Water Assessments" and/or "Use and Susceptibility Waiver Documents"

(C) If a water system detects in any sample a contaminant listed in subsection (3)(a) of this rule equal to or greater than the minimum detection limit listed in Table 11, then the water system shall monitor quarterly at each sampling point where a detection occurred. [Table not included. See ED. NOTE.]

(i) Based on a minimum of two quarterly samples for ground water sources and four quarterly samples for surface water sources, the Department may reduce the monitoring frequency required in paragraph (3)(a)(C) of this rule to annually provided the system is reliably and consistently below the MCL. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(ii) Systems which have three consecutive annual samples with no detection of a contaminant may apply to the Department for a waiver as specified in paragraph (3)(a)(B) of this rule.

(iii) If any monitoring required in paragraph (3)(a)(A) of this rule results in the detection of one or more of certain related contaminants (Aldicarb, Aldicarb sulfone, Aldicarb sulfoxide and Heptachlor, Heptachlor epoxide), then subsequent monitoring shall analyze for all related contaminants.

(D) If the results of an analysis prescribed in paragraph (3)(a)(A) of this rule indicate that the level of any contaminant exceeds a maximum contaminant level, then the system must monitor quarterly. After a minimum of four quarterly samples show the system to be reliably and consistently below the MCL and in compliance with paragraph (3)(a)(G) of this rule, then the system may monitor annually.

(E) The Department may require confirmation samples for positive or negative results. If a confirmation sample is required by the Department, the result must be averaged with the original sample result (unless the previous sample has been invalidated by the Department) and the average used to determine compliance.

(F) The Department may allow compositing of samples to reduce the number of samples to be analyzed by the system. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collections. If the concentration in the composite sample detects one or more contaminants listed in subsection (3)(a) of this rule, then a follow-up sample must be taken and analyzed within 14 days at each sampling point included in the composite, and be analyzed for that contaminant. Duplicates taken on the original composite samples may be used instead of resampling provided the duplicates are analyzed and the results reported to the Department within 14 days of collection. For systems with a population greater than 3,300, the Department may allow compositing at sampling points only within a single system. For systems with a population ≤ 3,300, the Department may allow compositing among different systems, provided the 5-sample limit is maintained.

(G) Compliance with contaminants listed in OAR 333-061-0030(2)(a) shall be determined based on the analytical results obtained at each sampling point. If one sampling point is in violation of an MCL, the

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system is in violation of the MCL. For systems which monitor more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. Systems which monitor annually or less whose sample result exceeds the regulatory detection limit prescribed in paragraph (C) of this subsection (Table 11) must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly monitoring. If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately. If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected. If a sample result is less than the detection limit, zero will be used to calculate the annual average. If the system is out of compliance, the system shall follow the reporting and public notification procedures as prescribed in OAR 333-061-0040 and 333-061-0042(2)(b)(A).

(H) If monitoring data collected after January 1, 1990 are consistent with the requirements of subsection (3)(a) of this rule, the Department may allow systems to use that data to satisfy the monitoring requirements for the initial compliance periods beginning January 1, 1993 and January 1, 1996.

(I) All Community and Non-Transient Non-Community water systems: shall monitor according to the following schedule:

Population – Begin Initial Monitoring – Complete Initial Monitoring by
300 or More – January 1, 1993 – December 31, 1993
100 to 299 – January 1, 1994 – December 31, 1994
Less than 100 – January 1, 1995 – December 31, 1995

(J) All new systems or systems that use a new source of water must demonstrate compliance with the MCL within a period of time specified by the Department. The system must also comply with the initial sampling frequencies specified by the Department to ensure a system can demonstrate compliance with the MCL.

(b) Disinfection Byproducts:

(A) Community water systems which serve a population of 10,000 or more individuals and to which a disinfectant (oxidant) has been added in any part of the drinking water treatment process shall analyze for total trihalomethanes. The minimum number of samples required to be taken by the system shall be based on the number of water sources used by the system except that multiple wells drawing raw water from a single aquifer may, with Department approval, be considered one water source for determining the minimum number of samples. All samples taken within an established frequency shall be collected within a 24-hour period.

(i) For all Community water systems utilizing surface water sources in whole or in part, and for all Community water systems utilizing only ground water sources that have not been determined by the Department to qualify for the monitoring requirements of paragraph (3)(b)(A)(iv) of this rule, analyses for total trihalomethanes shall be performed at quarterly intervals on at least four water samples for each water source used by the system (a total of 16 samples per source per year). At least 25 percent of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining 75 percent shall be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water and different treatment methods employed. The results of all analyses obtained each quarter shall be reported to the Department as described in OAR 333-061-0040. Results of analyses on all samples collected shall be used by the Department in the computation of the average trihalomethane level, unless the analytical results are invalidated for technical reasons.

(ii) Upon the written request of a Community water system, the monitoring frequency required by paragraph (3)(b)(A)(i) of this rule may be reduced by the Department to a minimum of one sample analyzed for TTHMs per quarter for each source taken at a point in the distribution system reflecting the maximum residence time of the water in the system, upon a written determination by the Department that the data from at least one year of monitoring in accordance with paragraph (3)(b)(A)(i) of this rule and local conditions demonstrate that total trihalomethane concentrations will be consistently below the maximum contaminant level.

(iii) If at any time during which the reduced monitoring frequency prescribed under this subsection applies, the results from any analysis exceed 0.10 mg/l of TTHMs and such results are confirmed by at least one check sample taken promptly after such results are received, or if the system makes any significant change to its source of water or treatment program, the system shall immediately begin monitoring in accordance with the requirements of paragraph (3)(b)(A)(i) of this rule, and such monitoring shall continue for at least one year before the frequency may be reduced again. At the option of the Department, a system's monitoring frequency shall be increased above the minimum in those cases where it is necessary to detect variations of TTHM levels within the distribution system.

(iv) Upon written request to the Department, a Community water system utilizing only ground water sources may seek to have the monitoring frequency reduced to a minimum of one sample for maximum TTHM potential per year for each source used by the system taken at a point in the distribution system reflecting maximum residence time of the water in the system. The system shall submit to the Department the results of at least one sample analyzed for maximum TTHM potential for each source used by the system taken at a point in distribution system reflecting the maximum residence time of the water in the system. The system's monitoring frequency may only be reduced upon a written determination by the Department that, based upon the data submitted by the system, the system has a maximum TTHM potential of less than 0.10 mg/l and that, based upon an assessment of the local conditions of the system, the system is not likely to approach or exceed the maximum contaminant level for TTHMs. The results of all analyses shall be reported to the Department within 30 days of the system's receipt of such results. All samples collected shall be used for determining whether the system must comply with the monitoring requirements of paragraph (3)(b)(A) of this rule, unless the analytical results are invalidated for technical reasons.

(v) A system granted reduced sampling frequencies under paragraph (3)(b)(A)(iv) of this rule shall immediately resume monitoring in accordance with paragraph (3)(b)(A)(i) of this rule whenever an analysis, confirmed by check samples equals or exceeds 0.10 mg/l of TTHM potential. Such monitoring shall continue for at least one year before the frequency may be reduced again. In the event of any significant change to the system's raw water or treatment program, the system shall immediately analyze an additional sample for maximum TTHM potential taken at a point in the distribution system reflecting maximum residence time of the water in the system for the purpose of determining whether the system must comply with the monitoring requirements of paragraph (3)(b)(A)(i) of this rule. At the option of the Department, monitoring frequencies may be increased above the minimum in those cases where this is necessary to detect variation of TTHM levels within the distribution system.

(B) Compliance with the Maximum Contaminant Level for TTHM levels as specified by OAR 333-061-0030(2)(b)(A) shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in paragraph (3)(b)(A)(i) or (ii) of this rule. When the average of samples covering any running 12 month period exceeds the Maximum Contaminant Level, the water supplier shall report to the Department as prescribed in OAR 333-061-0040 and notify the public pursuant to OAR 333-061-0042(2)(b)(A). Monitoring after public notification shall be at a frequency designated by the Department and shall continue until a monitoring schedule as a condition to a variance, permit or enforcement action shall become effective.

(C) Before a community water system makes any significant modifications to its existing treatment process for the purposes of achieving compliance with the Maximum Contaminant Level for TTHM levels as specified by OAR 333-061-0030(2)(b)(A), the water system must obtain approval from the Department of a detailed plan of the proposed modifications and those safeguards that will be implemented to ensure that the bacteriological quality of the drinking water served the water system will not be adversely affected by such modification. Each system shall comply with the provisions set forth in the detailed plan. At minimum, the detailed plan shall include the following requirements for the water system:

(i) Evaluate the water system for sanitary defects and evaluate the source water for biological quality;

(ii) Evaluate the existing treatment practices and consider improvements that will minimize disinfectant demand and optimize finished water quality throughout the distribution system;

(iii) Provide baseline water quality survey data for the distribution system which should include the monitoring results for coliform and fecal coliform bacteria, fecal streptococci, standard plate counts at 35oC and 20oC, phosphate, ammonia nitrogen and total organic carbon, and (where source waters are heavily contaminated with sewage effluent) virus studies.

(iv) Conduct additional monitoring to assure continued maintenance of optimal biological quality in finished water, for example, when chloramine are being introduced as disinfectants or when pre-chlorination is being discontinued. Additional monitoring is required by the Department for chlorate, chlorite, and chlorine dioxide when chlorine dioxide is used. Standard plate count analyses will also be required by the Department as appropriate before and after the modification.

(v) Consider inclusion in the plan of provisions to maintain an active disinfectant residual throughout the distribution system at all times during and after the modification.

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(D) The requirements in paragraphs (3)(b)(A) through (C) of this rule apply to community water systems using surface water or groundwater under the direct influence of surface water which serve at least 10,000 until December 31, 2001. The requirements in paragraphs (3)(b)(A) through (C) of this rule apply to community water systems which use only ground water not under the direct influence of surface water that add a disinfectant (oxidant) in any part of the treatment process and serve at least 10,000 people until December 31, 2003. After December 31, 2003, paragraphs (3)(b)(A) through (C) of this rule are no longer applicable.

(E) General sampling and analytical requirements regarding disinfection byproducts for Community water systems and Non-transient Non-community water systems that add a disinfectant (oxidant) in any part of the treatment process are specified in paragraphs (3)(b)(E) through (R) of this rule.

(i) Water systems must take all samples during normal operating conditions.

(ii) Water systems may consider multiple wells drawing water from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with approval from the Department in accordance with criteria developed for Consumer Confidence Reports (OAR 333-061-0043).

(iii) Failure to monitor in accordance with the monitoring plan as specified in paragraph (3)(b)(K) of this rule is a monitoring violation.

(iv) Failure to monitor will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MCLs or MRDLs.

(v) Systems may use only data collected under the provisions of this rule or 40 CFR Parts 141.140 through 141.144 (Subpart M — Information Collection Rule for Public Water Systems) to qualify for reduced monitoring.

(F) Monitoring requirements for disinfection byproducts.

(i) Routine monitoring for TTHMs and HAA5. Systems must monitor at the frequency as specified in the Table 12: [Table not included. See ED. NOTE.]

(ii) Systems may reduce monitoring, except as otherwise provided, as specified in Table 13 as follows: [Table not included. See ED. NOTE.]

(iii) Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems which must monitor quarterly) or the result of the sample (for systems which must monitor no more frequently than annually) is no more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. Systems that do not meet these levels must resume monitoring at the frequency identified in paragraph (3)(b)(F)(i) of this rule in the quarter immediately following the monitoring period in which the system exceeds 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. For systems using only groundwater not under the direct influence of surface water and serving less than 10,000 persons, if either the TTHMs annual average is greater than 0.080 mg/L or the HAAs annual average is greater than 0.060 mg/L, the water system must go to increased monitoring as specified in paragraph (3)(b)(F)(i) of this rule in the quarter immediately following the monitoring period in which the system exceeds 0.080 mg/L or 0.060 mg/L for TTHMs or HAA5, respectively.

(iv) Systems on increased monitoring may return to routine monitoring if, after at least one year of monitoring, the TTHM annual average is less than or equal to 0.060 mg/L and the HAA5 annual average is less than or equal to 0.045 mg/L.

(v) The Department may return a system to routine monitoring at its discretion.

(G) Chlorite. Community and Non-transient Non-community water systems using chlorine dioxide, for disinfection or oxidation, must conduct monitoring for chlorite.

(i) Routine monitoring.

(I) Daily monitoring. Systems must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the system must take additional samples in the distribution system the following day at the locations required by paragraph (b)(G)(ii) of this section, in addition to the sample required at the entrance to the distribution system.

(II) Monthly monitoring. Systems must take a three-sample set each month in the distribution system. The system must take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling must

be conducted in the same manner (as three-sample sets, at the specified locations). The system may use the results of additional monitoring conducted under paragraph (b)(G)(ii) of this section to meet the requirement for monitoring in this paragraph.

(ii) Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system is required to take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(iii) Reduced monitoring.

(I) Chlorite monitoring at the entrance to the distribution system required by paragraph (b)(G)(i)(I) of this section may not be reduced.

(II) Chlorite monitoring in the distribution system required by paragraph (c)(G)(i) (II) of this section may be reduced to one three-sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system under paragraph (b)(G)(i)(II) of this section has exceeded the chlorite MCL and the system has not been required to conduct monitoring under paragraph (b)(G)(ii) of this section. The system may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system under paragraph (b)(G)(i)(II) of this section exceeds the chlorite MCL or the system is required to conduct monitoring under paragraph (b)(G)(ii) of this section, at which time the system must revert to routine monitoring.

(iv) Bromate.

(I) Routine monitoring. Community and Non-transient Non-community water systems using ozone, for disinfection or oxidation, must take one sample per month for each treatment plant in the system using ozone. Systems must take samples monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(II) Reduced monitoring. Systems required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for one year. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L based upon representative monthly measurements. If the running annual average source water bromide concentration is greater than or equal to 0.05 mg/L, the system must resume routine monitoring required by paragraph (G)(iv)(I) of this subsection.

(H) Monitoring requirements for disinfectant residuals.

(i) Chlorine and chloramines.

(I) Routine monitoring. Community and Non-transient Non-community water systems that use chlorine or chloramines must measure the residual disinfectant level at the same points in the distribution system and at the same time when total coliforms are sampled, as specified in OAR 333-061-0036(5). Water systems using surface water or groundwater under the direct influence of surface water may use the results of residual disinfectant concentration sampling conducted as required by OAR 333-061-0036(4)(a)(F) for unfiltered systems or OAR 333-061-0036(4)(b) (C) for systems which filter, in lieu of taking separate samples. Compliance with this rule is achieved when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. Operators may increase residual disinfectant levels of chlorine or chloramine (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health in order to address specific microbiological contaminant problems resulting from events in the source water or in the distribution system.

(II) Reduced monitoring from paragraph (H)(i)(I) of this subsection is not allowed.

(ii) Chlorine dioxide.

(I) Routine monitoring. Community, Non-transient Non-community, and Transient Non-community water systems that use chlorine dioxide for disinfection or oxidation must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system must take samples in the distribution system the following day at the locations required by paragraph (H)(ii)(II) of this subsection, in addition to the sample required at the entrance to the distribution system. Compliance with this rule is achieved when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL.

(II) Additional monitoring. On each day following a routine sample monitoring result that exceeds the MRDL, the system is required to take three chlorine dioxide distribution system samples. If chlorine dioxide or

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chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system (i.e., no booster chlorination), the system must take three samples as close to the first customer as possible, at intervals of at least six hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system (i.e., booster chlorination), the system must take one sample at each of the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(III) Chlorine dioxide monitoring may not be reduced from paragraph (H)(ii)(II) of this subsection.

(I) Monitoring requirements for disinfection byproduct precursors (DBPP).

(i) Routine monitoring. Water systems using surface water or groundwater under the direct influence of surface water which use conventional filtration treatment must monitor each treatment plant for TOC no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. All systems required to monitor under paragraph (I)(i) of this subsection must also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time as the source water sample is taken, all systems must monitor for alkalinity in the source water prior to any treatment. Systems must take one paired sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(ii) Reduced monitoring. Water systems using surface water or groundwater under the direct influence of surface water with an average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may reduce monitoring for both TOC and alkalinity to one paired sample and one source water alkalinity sample per quarter. The water system must revert to routine monitoring in the month following the quarter when the annual average treated water TOC greater than or equal to 2.0 mg/L.

(J) Bromide. Water systems required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly measurements for one year. The system must continue bromide monitoring to remain on reduced bromate monitoring.

(K) Monitoring plans. Each water system required to monitor under this paragraph must develop and implement a monitoring plan. The system must maintain the plan and make it available for inspection by the Department and the general public no later than 30 days following the applicable compliance dates as specified in OAR 333-061-0032(9)(b). All water systems using surface water or groundwater under the direct influence of surface water serving more than 3300 people must submit a copy of the monitoring plan to the Department no later than the date of the first report required by OAR 333-061-0040(1). The Department may also require the plan to be submitted by any other system. After review, the Department may require changes in any plan elements. The plan must include at least the following elements.

(i) Specific locations and schedules for collecting samples for any parameters included in subsection (3)(b) of this rule;

(ii) How the water system will calculate compliance with MCLs, MRDLs, and treatment techniques;

(iii) If approved for monitoring as a consecutive system, or if providing water to a consecutive system, the sampling plan must reflect the entire distribution system.

(L) General compliance requirements.

(i) Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system fails to monitor for TTHM, HAA5, or bromate, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average. Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

(ii) All samples taken and analyzed under the provisions of subsection (3)(b) of this rule must be included in determining compliance, even if that number is greater than the minimum required.

(iii) If, during the first year of monitoring as required by subsection (3)(b) of this rule, any individual quarter's average will cause the running annual average of that system to exceed the MCL, the system is out of compliance at the end of that quarter.

(M) Compliance requirements for TTHMs and HAA5.

(i) For systems monitoring quarterly, compliance with MCLs as required by OAR 333-061-0030(2)(b) must be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the system as required by paragraph (3)(b)(F) of this rule.

(ii) For water systems monitoring less frequently than quarterly, compliance must be based on an average of samples taken that year as required by paragraph (3)(b)(F)(i) of this rule. If the average of these samples exceeds the MCL, the water system must increase monitoring to once per quarter per treatment plant and the system is not considered in violation of the MCL until it has completed one year of quarterly monitoring, unless the result of fewer than four quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. Water systems required to increase monitoring frequency to quarterly monitoring must calculate compliance by including the sample which triggered the increased monitoring plus the following three quarters of monitoring.

(iii) If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public as required by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040.

(iv) If a water system fails to complete four consecutive quarters' monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

(N) Compliance requirements for Bromate. Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly samples (or, for months in which the system takes more than one sample, the average of all samples taken during the month) collected by the system as required by paragraph (3)(b)(G)(iv) of this rule. If the average of samples covering any consecutive four-quarter period exceeds the MCL, the water system is in violation of the MCL and must notify the public as required by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040. If a water system fails to complete 12 consecutive months monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

(O) Compliance requirements for Chlorite. Compliance must be based on an arithmetic average of each three sample set taken in the distribution system as required by paragraph (3)(b)(G)(i)(II) of this rule and paragraph (3)(b)(G)(ii) of this rule. If the arithmetic average of any three sample set exceeds the MCL, the water system is in violation of the MCL and must notify the public as required by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040.

(P) Compliance requirements for chlorine and chloramines.

(i) Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system as required by paragraph (3)(b)(H)(i) of this rule. If the average covering any consecutive four-quarter period exceeds the MRDL, the system is in violation of the MRDL and must notify the public as required by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040.

(ii) In cases where water systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance must be determined by including together all monitoring results of both chlorine and chloramines in calculating compliance. Reports submitted as required by OAR 333-061-0040(1) must clearly indicate which residual disinfectant was analyzed for each sample.

(Q) Compliance requirement for Chlorine dioxide.

(i) Acute violations. Compliance must be based on consecutive daily samples collected by the water system as required by paragraph (3)(b)(H)(ii) of this rule. If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (or more) of the three samples taken in the distribution system exceed the MRDL, the water system is in violation of the MRDL and must take immediate corrective action to lower the level of chlorine dioxide below the MRDL and must notify the public pursuant to the procedures for acute

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health risks as required by OAR 333-061-0042(2)(a)(C) in addition to reporting to the Department as required by OAR 333-061-0040. Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system will also be considered an MRDL violation and the water system must notify the public of the violation in accordance with the provisions for acute violations as required by OAR 333-061-0042(2)(a)(C) in addition to reporting to the Department as required by OAR 333-061-0040.

(ii) Non-acute violations. Compliance must be based on consecutive daily samples collected by the system as required by paragraph (3)(b)(H)(ii) of this rule. If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the water system is in violation of the MRDL and must take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and will notify the public pursuant to the procedures for non-acute health risks specified by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040. Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation and the water system must notify the public of the violation in accordance with the provisions for non-acute violations specified by OAR 333-061-0042(2)(b)(A) in addition to reporting to the Department as required by OAR 333-061-0040.

(R) Compliance requirements for Disinfection byproduct precursors (DBPP). Compliance must be determined as specified by OAR 333-061-0032(9)(f). Water systems may begin monitoring to determine whether Step 1 TOC removals can be met 12 months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any water system that does not monitor during this period, and then determines in the first 12 months after the compliance date that it is not able to meet the Step 1 requirements as specified in OAR 333-061-0032(9)(e)(B) and must therefore apply for alternate minimum TOC removal (Step 2) requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements as allowed by OAR 333-061-0032(9)(e)(C) and is in violation. Water systems may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date. For systems required to meet step 1 TOC removals, if the value calculated under OAR 333-061-0032(9)(f)(A)(iv) is less than 1.00, the system is in violation of the treatment technique requirements and must notify the public pursuant to OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department pursuant to OAR 333-061-0040.

(c) Volatile Organic Chemicals: Benzene, Carbon tetrachloride, Cis-1,2-Dichloroethylene, Dichloromethane, Ethylbenzene, Monochlorobenzene, O-Dichlorobenzene, P-Dichlorobenzene, Styrene, Tetrachloroethylene(PCE), Toluene, Trans-1,2-Dichloroethylene, Trichloroethylene(TCE), Vinyl chloride, Xylenes(total), 1,1-Dichloroethylene, 1,1,1-Trichloroethane, 1,1,2-Trichloroethane, 1,2-Dichloroethane, 1,2-Dichloropropane, and 1,2,4-Trichlorobenzene.

(A) Samples of water which is delivered to users shall be analyzed for regulated volatile organic chemicals (VOC) as follows:

(i) Community and Non-Transient Non-Community water systems using surface, ground water under the direct influence of surface water or ground water sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system after any application of treatment. Community and Non-Transient Non-Community water systems shall collect four consecutive quarterly samples from each sampling point during each compliance period beginning in the initial compliance period starting January 1, 1993. The water system shall take each sample from the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. New wells in an existing wellfield or within an existing drinking water protection area may be eligible for a reduction in initial monitoring from four consecutive quarterly samples to one sample if no detections occur and if, based on the system's Source Water Assessment, the Department determines that the new well is producing from the same and only the same aquifer or does not significantly modify the existing drinking water protection area.

(ii) If warranted, the Department may designate additional sampling points within the distribution system or at the consumer's tap which more accurately determines consumer exposure.

(iii) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all sources being used.

(iv) If a water system has two or more wells that have been determined by the Department to constitute a "wellfield" as specified in OAR 333-061-0058, the system must sample at the entry point(s) designated by the Department.

(B) For the purpose of subsection (3)(c) of this rule, a detectable level for VOCs is 0.0005 mg/l.

(C) If the initial analyses do not detect any contaminant listed in subsection (3)(c) of this rule, then monitoring for all of the VOCs may be reduced to:

(i) Annual per entry point for surface and ground water systems;

(ii) Once every three years per entry point for ground water systems after a minimum of three years of annual monitoring and no history of detections;

(iii) Once every 6 years if the system has a state certified Drinking Water Protection Plan or if that portion of the aquifer identified by the drinking water protection area delineation has been determined to be of "moderate" susceptibility to the VOCs according to the Department's Use and Susceptibility Protocol. Information from the system's Source Water Assessment can be used in this determination; or

(iv) Once every 9 years if that portion of the aquifer identified by the drinking water protection area delineation has been determined to be of "low susceptibility" to the VOCs according to the Use and Susceptibility Waiver Document. Information from the system's Source Water Assessment can be used in this determination.

(v) The Department may establish area-wide waivers based on historical monitoring data, land use activity, and the results of "Source Water Assessments" and/or "Use and Susceptibility Waiver Documents".

(D) Each Community and Non-Transient Non-Community water system which does not detect any contaminant listed in subsection (3)(c) of this rule after the initial monitoring period may apply to the Department for a waiver from the requirements prescribed in paragraphs (3)(c)(A) and (C) of this rule according to procedures described in paragraph (3)(a)(B) of this rule and the Use and Susceptibility Waiver Guidance Document developed by the Department. A waiver must be in place prior to the year in which the monitoring is to be accomplished, and the water system must reapply for a waiver for Volatile Organic Chemicals monitoring every two compliance periods (6 years).

(E) As a condition of a waiver groundwater systems must take one sample at each sampling point during the time the waiver is in effect and update its vulnerability assessment addressing those factors listed in paragraph (3)(a)(B)(ii) and (iii) of this rule. The Department must confirm that a system is not vulnerable within three years of the original determination or the waiver is invalidated and the system is required to sample annually as specified in paragraph (3)(c)(C) of this rule.

(F) Surface water systems which do not detect any contaminant listed in subsection (3)(c) of this rule after completing the initial monitoring and have been determined to be not vulnerable to VOC contamination by the Department shall monitor at the discretion of the Department. The Department shall reevaluate the vulnerability of such systems during each compliance period.

(G) If a water system detects any contaminant listed in subsection (3)(c) of this rule (except vinyl chloride) in any sample greater than the minimum detection limit of 0.0005 mg/l, then the water system shall monitor quarterly at each sampling point where a detection occurred.

(i) Based on a minimum of two quarterly samples for ground water sources and four quarterly samples for surface water sources, the Department may reduce the monitoring frequency required in paragraph (3)(c)(G) of this rule to annually provided the system is reliably and consistently below the MCL. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(ii) Systems which have three consecutive annual samples with no detection of a contaminant may apply to the Department for a waiver as specified in paragraph (3)(c)(D) of this rule.

(iii) Groundwater systems which have detected one or more of the following two-carbon organic compounds: trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one or more of the two-carbon organic compounds was detected. If the results of the first analysis do not detect vinyl chloride, the Department may reduce the quarterly monitoring frequency of vinyl chloride monitoring to one sample during each compliance period. Surface water systems are required to monitor for vinyl chloride at the discretion of the Department.

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(H) If the results of an analysis prescribed in paragraph (3)(c)(A) of this rule indicate that the level of any contaminant exceeds a maximum contaminant level, then the system shall monitor quarterly. After a minimum of four consecutive quarterly samples show the system to be reliably and consistently below the MCL and in compliance with paragraph (3)(c)(K) of this rule, then the system may monitor annually during the quarter which previously yielded the highest analytical result.

(I) The Department may require confirmation samples for positive or negative results. If a confirmation sample is required by the Department, the result must be averaged with the original sample result and the average used to determine compliance.

(J) The Department may allow compositing of samples to reduce the number of samples to be analyzed by the system. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collections. If the concentration in the composite sample is ≤ 0.0005 mg/l for any contaminant listed in subsection (3)(c) of this rule, then a follow-up sample must be taken and analyzed within 14 days at each sampling point included in the composite, and be analyzed for that contaminant. Duplicates taken on the original composite samples may be used instead of resampling provided the duplicates have not been held for longer than 14 days. For systems with a population greater than 3,300, the Department may allow compositing at sampling points only within a single system. For systems with a population $\leq 3,300$, the Department may allow compositing among different systems provided the 5-sample limit is maintained.

(K) Compliance with contaminants listed in OAR 333-061-0030(2)(c) shall be determined based on the analytical results obtained at each sampling point. If one sampling point is in violation of an MCL, the system is in violation of the MCL. For systems which monitor more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. Systems which monitor annually or less whose sample result exceeds the MCL must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling. If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately. If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected. If a sample result is less than the detection limit, zero will be used to calculate the annual average. If the water system is out of compliance, the system shall follow the reporting and public notification procedures as prescribed in OAR 333-061-0040 and 333-061-0042(2)(b)(A).

(L) If monitoring data collected after January 1, 1988 are consistent with the requirements of subsection (3)(c) of this rule, the Department may allow systems to use that data (i.e. a single sample rather than four quarterly samples) to satisfy the monitoring requirements prescribed in paragraph (3)(c)(A) of this rule for the initial compliance period. Systems which use grandparented samples and did not detect any contaminant listed in subsection (3)(c) of this rule shall begin monitoring annually in accordance with paragraph (3)(c)(C) of this rule beginning with the initial compliance period.

(M) All Community and Non-Transient Non-Community water systems shall monitor according to the following schedule:

Population – Begin Initial Monitoring – Complete Initial Monitoring By
300 or More – January 1, 1993 – December 31, 1993
100 to 299 – January 1, 1994 – December 31, 1994
Less than 100 – January 1, 1995 – December 31, 1995

(N) All new systems or systems that use a new source of water must demonstrate compliance with the MCL within a period of time specified by the Department. The system must also comply with the initial sampling frequencies specified by the Department to ensure a system can demonstrate compliance with the MCL.

(4) Surface Water Treatment.

(a) A public water system that uses a surface water source or a groundwater source under the direct influence of surface water that does not provide filtration treatment must monitor water quality as specified in this subsection beginning January 1, 1991 for systems using a surface water source and January 1, 1991 or 6 months after the Department has identified a source as being under the direct influence of surface water for groundwater sources, whichever is later.

(A) Fecal coliform or total coliform density measurements as required by OAR 333-061-0032(2)(b)(A) must be performed on representative source water samples immediately prior to the first or only point of disinfectant application. The system must sample for fecal or total coliforms at

the minimum frequency shown in Table 14 each week the system serves water to the public. These samples must be collected on separate days. Also one fecal or total coliform density measurement must be made every day the system serves water to the public when the turbidity of the source water exceeds 1 NTU (these samples count towards the weekly coliform sampling requirement) unless the Department determines that the system, for logistical reasons outside of its control, cannot have the sample analyzed within 30 hours of collection. [Table not included. See ED. NOTE.]

(B) Turbidity measurements as required by OAR 333-061-0032(2)(b)(B) must be performed on representative grab samples of source water immediately prior to the first or only point of disinfectant application every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the Department. Systems using continuous turbidity monitoring must report the turbidity data to the Department in the same manner that grab sample results are reported. The Department will furnish report forms upon request.

(C) The total inactivation ratio for each day that the system is in operation must be determined based on the CT_{99.9} values in Tables 15 through 22. The parameters necessary to determine the total inactivation ratio must be monitored as follows:

(i) The temperature of the disinfected water must be measured at least once per day at each residual disinfectant concentration sampling point.

(ii) If the system uses chlorine, the pH of the disinfected water must be measured at least once per day at each chlorine residual disinfectant concentration sampling point.

(iii) The disinfectant contact time(s) (“T”) in minutes must be determined for each day during peak hourly flow.

(iv) The residual disinfectant concentration(s) (“C”) in mg/l before or at the first customer must be measured each day during peak hourly flow.

(v) If a system uses a disinfectant other than chlorine, the system may demonstrate to the Department, through the use of protocol approved by the Department for on-site disinfection challenge studies or other information satisfactory to the Department, that CT_{99.9} values other than those specified in the Tables 21 and 22 or other operational parameters are adequate to demonstrate that the system is achieving the minimum inactivation rates required by OAR 333-061-0032(3)(a). Table 15 through Table 22: [Table not included. See ED. NOTE.]

(D) The total inactivation ratio must be calculated as follows:

(i) If the system uses only one point of disinfectant application, the system may determine the total inactivation ratio based on either of the following two methods:

(I) One inactivation ratio (CT_{calc}/CT_{99.9}) is determined before or at the first customer during peak hourly flow and if the CT_{calc}/CT_{99.9} is greater than or equal to 1.0, the 99.9 percent Giardia lamblia inactivation requirement has been achieved; or

(II) Successive CT_{calc}/CT_{99.9} values representing sequential inactivation ratios, are determined between the point of disinfection application and a point before or at the first customer during peak hourly flow. Under this alternative, the following method must be used to calculate the total inactivation ratio: Step 1: Determine CT_{calc}/CT_{99.9} for each sequence Step 2: Add the CT_{calc}/CT_{99.9} values together Step 3: If $\sum(CT_{calc}/CT_{99.9})$ is greater than or equal to 1.0, the 99.9 percent Giardia lamblia inactivation requirement has been achieved.

(ii) If the system uses more than one point of disinfectant application before or at the first customer, the system must determine the CT value of each disinfection sequence immediately prior to the next point of disinfectant application during peak hourly flow. The CT_{calc}/CT_{99.9} value of each sequence and CT_{calc}/CT_{99.9} must be calculated using the methods in sub-sub paragraph (a)(A)(i)(II) of this rule to determine if the system is in compliance with OAR 333-61-032 (3)(a).

(E) The residual disinfectant concentration of the water entering the distribution system must be monitored continuously, and the lowest value must be recorded each day. If there is a failure in the continuous monitoring equipment, grab sampling every 4 hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment, and systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies prescribed in Table 23: [Table not included. See ED. NOTE.]

The day’s samples cannot be taken at the same time. The sampling intervals are subject to Department review and approval. If at any time the residual disinfectant concentration falls below 0.2 mg/l in a system using

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grab sampling in lieu of continuous monitoring, the system must take a grab sample every 4 hours until the residual disinfectant concentration is 0.2 mg/l.

(F) The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in section (5) of this rule, except that the Department may allow a public water system which uses both a surface water source or a groundwater source under the direct influence of surface water, and a groundwater source, to take disinfectant residual samples at points other than the total coliform sampling points if the Department determines that such points are more representative of treated (disinfected) water quality within the distribution system.

(b) A public water system that uses a surface water source or a groundwater source under the direct influence of surface water that does provide filtration treatment must monitor water quality as specified in this subsection beginning June 29, 1993 or when filtration treatment is installed, whichever date is later.

(A) Turbidity measurements as required by section OAR333-061-0032(4) must be performed on representative samples of the system's filtered water, measured as soon after filtration as possible and prior to any storage, every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the Department. Calibration of all turbidimeters must be performed according to manufacturer's specifications, but no less frequently than quarterly. For any systems using slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the Department may reduce the sampling frequency to once per day if it determines that less frequent monitoring is sufficient to indicate effective filtration performance. Systems using lime softening may acidify representative samples prior to analysis using a method approved by the Department.

(B) Monitoring for the residual disinfectant concentration entering the distribution system shall be performed as prescribed in paragraph (4)(a)(E) of this rule.

(C) Monitoring for the residual disinfectant concentration in the distribution system shall be performed as prescribed in paragraph (4)(a)(F) of this rule.

(c) In addition to subsection (b) of this section, water systems serving at least 10,000 people or serving less than 10,000 people beginning January 1, 2005 using surface water or groundwater under the direct influence of surface water where treatment includes conventional filtration treatment or direct filtration treatment must conduct continuous turbidity monitoring for each individual filter and must calibrate turbidimeters using the procedure specified by the manufacturer. Individual filter monitoring results must be recorded every 15 minutes. If there is a failure in the continuous turbidity monitoring equipment, the water system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is repaired and back on-line. The water system serving at least 10,000 people has a maximum of five working days after failure to repair the equipment or the water system is in violation. The water system serving less than 10,000 people has a maximum of 14 days to resume continuous monitoring before a violation is incurred. If the water system's conventional or direct filtration treatment plant consists of two or fewer filters, continuous monitoring of the combined filter effluent turbidity may be substituted for continuous monitoring of individual filter effluent turbidity. For systems serving less than 10,000 people, the recording and calibration requirements that apply to individual filters also apply when continuous monitoring of the combined filter effluent turbidity is substituted for the continuous monitoring of individual filter effluent turbidity;

(d) The results of test data collected to meet the requirements prescribed in OAR 333-061-0036 shall be reported as prescribed in OAR 333-061-0040.

(5) Microbiological contaminants:

(a) Routine sampling for pathogens is not required but may be required by the Department when specific evidence indicates the possible presence of such organisms.

(b) Samples shall be collected and analyzed for the purpose of determining compliance with the maximum contaminant levels for coliform bacteria as follows:

(A) Samples shall be collected from points which are representative of conditions, including impacts of multiple sources, within the distribution system at regular time intervals throughout the reporting period;

(B) The standard sample volume required for total coliform analysis, regardless of analytical method used, is 100 ml.

(C) For all Community water systems utilizing surface and/or ground water, all Non-Transient Non-Community and Transient Non-Community water systems utilizing surface water sources, and all Non-Transient Non-Community and Transient Non-Community water systems utilizing groundwater sources serving more than 1000 persons per day, the analyses shall be made at regular time intervals and at a frequency no less than set forth in Table 24.

(D) Non-Transient Non-Community and Transient Non-Community water systems using groundwater under the direct influence of surface water must monitor at a frequency no less than set forth in Table 24. Monitoring must begin at this frequency no later than 6 months after the Department has determined that the groundwater source is under the direct influence of surface water. [Table not included. See ED. NOTE.]

(E) For Transient and Non-Transient Non-Community water systems utilizing ground water sources and serving 1000 persons or fewer per day and all State Regulated water systems, the analyses shall be made in each calendar quarter during which water is provided to the public.

(F) Public water systems must collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sampling site plan. The plan must include, at a minimum, a brief narrative of the water system components, a map of the distribution system showing the representative routine and repeat sampling sites, and sampling protocols. These plans must be approved by the Department.

(G) Any public water system that uses surface water or groundwater under the direct influence of surface water and does not provide filtration treatment as defined by these rules must collect at least one sample at the first customer for each day the turbidity level of the source water measured as prescribed in OAR 333-061-0036(4)(a)(B) exceeds 1 NTU. This sample must be analyzed for the presence of total coliforms. When one or more turbidity measurements in any day exceed 1 NTU, the system must collect this coliform sample within 24 hours of the first exceedance or as early as possible the next business day, unless the Department determines that the system cannot have the sample analyzed within 30 hours of collection due to logistical reasons outside the system's control. Sample results from this coliform monitoring must be included in determining compliance with the microbiological MCL prescribed in OAR 333-061-0030(4).

(c) When a routine sample is total coliform-positive, a set of repeat samples must be collected within 24 hours of being notified of the positive results by the certified laboratory.

(A) Systems which collect more than 1 routine sample/month must collect at least 3 repeat samples for each total coliform-positive routine sample found.

(B) Systems which collect 1 routine sample/month or less must collect at least four repeat samples for each total coliform-positive sample found.

(d) The system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If the original sampling site is at or near the end of the distribution system, the Department may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site. All repeat samples must be collected on the same day.

(e) Systems with a single service connection may be allowed by the Department to collect the required set of repeat samples over a four-day period.

(f) The Department may extend the 24-hour limit in subsection (5)(c) of this rule on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within 24 hours that is beyond its control.

(g) Results of all routine and repeat samples not invalidated by the Department must be included in determining compliance with the MCL for total coliforms required in OAR 333-061-0030(4).

(h) If one or more repeat samples in the set is total-coliform positive, the public water system must collect an additional set of repeat samples in the manner specified in subsections (5)(c), (d) and (e) of this rule. The additional samples must be collected within 24 hours of being notified of the positive result, unless the Department extends the limit as provided in subsection (5)(f) of this rule. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or The Department determines that the MCL for total coliforms in OAR 333-061-0030(4) has been exceeded. After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of

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the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample(s) as a repeat sample instead of a routine sample.

(i) If a system collecting fewer than five routine samples/month has one or more total coliform-positive samples and the Department does not invalidate the sample(s) under subsection (5)(k) of this rule, the system must collect at least five routine samples during the next month the system provides water to the public. The Department may waive this requirement if:

(A) The Department performs a site visit before the end of the next month the system provides water to the public and determines that additional monitoring and/or corrective action is not needed, or

(B) The Department determines why the sample was total coliform-positive and establishes that the system has corrected the problem before the end of the next month the system serves water to the public. The Department must document in writing this decision, have it approved and signed by the supervisor of the official who recommends such a decision, and make this document available to the public. The written documentation must describe the specific cause of the total coliform-positive sample and what action the system has taken and/or will take to correct this problem. The Department cannot waive this requirement solely on the grounds that all repeat samples are total-coliform negative. Under this paragraph, a system must still take at least one routine sample before the end of the next month it serves water to the public and use it to determine compliance with the MCL for total coliforms required in OAR 333-061-0030(4) unless the Department determines that the system has corrected the contamination problem before the system took the set of repeat samples required in subsection (5)(c)(d) and (e) of this rule, and all repeat samples were total coliform negative.

(j) When the maximum microbiological contaminant level for total coliform is exceeded or when the maximum contaminant level for fecal coliform or fecal and total coliform is exceeded the water supplier shall report to the Department as prescribed in OAR 333-061-0040 and notify the public as prescribed in OAR 333-061-0042(2)(b)(A) for total coliform and 333-061-0042(2)(a)(A) for fecal coliform/E.Coli. If the water system has failed to comply with a coliform monitoring requirement, including the sanitary survey requirement, the system must report to the Department as prescribed in OAR 333-061-0040 and notify the public as prescribed in OAR 333-061-0042;

(k) The Department may invalidate a total coliform-positive samples if:

(A) The laboratory establishes that improper sample analysis caused the total coliform-positive result, or

(B) The Department determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem on the basis of the results of repeat samples collected as required by subsection (5)(c), (d) and (e) of this rule. The Department cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative. (The Department cannot invalidate a total coliform-positive sample on the basis of repeat samples if all the repeat samples are total coliform-negative, or if the public water system has only one service connection), or

(C) The Department has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required by paragraphs (c) through (h) of this rule and use them to determine compliance with the microbiological MCL prescribed in OAR 333-061-0030(4). To invalidate a total coliform-positive sample under this paragraph, the decision with its rationale must be documented in writing, approved and signed by the supervisor of the Department official who recommended the decision. The Department must make this document available to the public. The written documentation must state the specific cause of the total coliform-positive sample and what action the system has taken, or will take, to correct this problem. The Department may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(l) A certified laboratory must invalidate a total coliform sample (unless total coliforms are detected) if the sample produced a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P-A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a mem-

brane filter (e.g., Membrane Filter Technique). If a certified laboratory invalidates a sample because of such interference, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system must continue to resample within 24 hours and have the samples analyzed until it obtains a valid result. The Department may waive the 24-hour time limit on a case-by-case basis.

(m) Any total coliform-positive sample invalidated under subsections (5)(k) or (l) of this rule shall not count towards meeting the minimum monitoring requirements as prescribed in subsections (5)(a) through (e) of this rule.

(n) If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture medium to determine if fecal coliforms are present. The system may test for E. coli in lieu of fecal coliforms. If fecal coliforms or E. coli are present, the system must notify the Department by the end of the day when the system is notified of the test result or, if the Department office is closed, by the end of the next business day.

(o) The Department may allow a water system to forgo testing for fecal coliform or E. coli on total coliform-positive samples as prescribed in subsection (5)(n) of this rule if the system assumes that the total coliform-positive sample is fecal coliform-positive or E. coli positive. The system must notify the Department as specified in subsection (5)(n) of this rule and the provisions of OAR 333-061-0030(4) apply.

(p) Public water systems which do not collect five or more routine samples per month must undergo an initial sanitary survey by June 29, 1994 for Community water systems and June 29, 1999 for Non-Transient and Transient Non-Community water systems. Thereafter, systems must undergo another sanitary survey every five years, except that Non-Transient and Transient Non-Community water systems using only protected and disinfected groundwater as defined by the Department, must undergo subsequent sanitary surveys at least every ten years after the initial survey. The Department must review the results of each survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

(6) Radionuclides:

(a) Gross alpha particle activity, Radium 226, Radium 228, and Uranium:

(A) Initial Monitoring. Community Water Systems without acceptable historical data, as defined below, must conduct initial monitoring to determine compliance with OAR 333-061-0030(5) by December 31, 2007. Samples must be collected from each entry point to the distribution system during 4 consecutive quarters before December 31, 2007 according to the following schedule: Population – Begin Initial Monitoring – Complete Initial Monitoring by: 300 or More – First Quarter 2005 – Fourth Quarter 2005: 100-299 – First Quarter 2006 – Fourth Quarter 2006 Less than 100 – First Quarter 2007 – Fourth Quarter 2007

(ii) New systems or systems using a new source must conduct initial monitoring beginning the first quarter of operation, followed by three consecutive quarterly samples.

(iii) The Department may waive the final two quarters of the initial monitoring at an entry point if the results of the samples from the first two quarters are below the method detection limit.

(iv) Grandparenting of historical data. A system may use monitoring data from each source or entry point collected between June 2000 and December 8, 2003 to satisfy the initial monitoring requirements.

(v) If the average of the initial monitoring results for a sampling point is above the MCL, the system must collect and analyze quarterly samples at the entry point until the system has results from four consecutive quarters that are at or below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the Department.

(B) Reduced Monitoring. Radionuclide monitoring may be reduced to once every three years, once every six years, or once every nine years based on the following criteria:

(i) If the average of the initial monitoring result for each contaminant (gross alpha particle activity, radium-226, radium-228, and uranium) at a given entry point is below the detection limit, sampling for that contaminant may be reduced to once every nine years.

(ii) For gross alpha particle activity, combined radium 226 and radium 228, and uranium, if the average of the initial monitoring results is at or above the detection limit but at or below 1/2 the MCL, sampling for that contaminant may be reduced to once every six years.

(iii) For gross alpha particle activity, combined radium 226 and radium 228, and uranium, if the average of the initial monitoring results is

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above 1/2 the MCL but at or below the MCL, the system must collect one sample at that sampling point at least once every three years.

(iv) Systems must use the samples collected during the reduced monitoring period to determine the monitoring frequency for subsequent monitoring periods.

(v) If a system has a monitoring result that exceeds the MCL while on reduced monitoring, the system must collect and analyze quarterly samples at that entry point until the system has results from four consecutive quarters that are below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the Department.

(C) Compositing of samples. A system may composite up to four consecutive quarterly samples from a single entry point if the analysis is done within a year of the first sample. If the analytical result from the composited sample is greater than 1/2 the MCL, the department may direct the system to take additional quarterly samples before allowing the system to sample under a reduced monitoring schedule.

(D) Substitution of results.

(i) A gross alpha particle activity measurement may be substituted for the required radium-226 measurement if the gross alpha particle activity does not exceed 5 pCi/L.

(ii) A gross alpha particle activity measurement may be substituted for the required uranium measurement if the gross alpha particle activity does not exceed 15 pCi/L.

(iii) The gross alpha measurement shall have a confidence interval of 95% (1.65 where 1/2 is the standard deviation of the net counting rate of the sample) for radium-226 and uranium.

(iv) When a system uses a gross alpha particle activity measurement in lieu of a radium-226 and/or uranium measurement, the gross alpha particle activity analytical result will be used to determine the future monitoring frequency for radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, 1/2 the method detection limit will be used to determine compliance and the future monitoring frequency.

(b) Beta particle and photon radioactivity:

(A) Community water systems designated by the Department as "vulnerable" must sample for beta particle and photon radioactivity as follows. No waivers shall be granted:

(i) Initial samples must be collected by December 31, 2007.

(ii) Quarterly samples for beta emitters and annual samples for tritium and strontium-90 must be taken at each entry point to the distribution system. Systems already designated by the state must continue to sample until the state removes the designation.

(iii) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sample point has a running annual average less than or equal to 50 pCi/l, sampling for contaminants prescribed in paragraph (A)(i) of this subsection maybe reduced to once every three years.

(B) Community water systems designated by the Department as "contaminated" by effluents from nuclear facilities and must sample for beta particle and photon radioactivity as follows. No waivers shall be granted.

(i) Systems must collect quarterly samples for beta emitters as detailed below and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system. Sampling must continue until the Department removes the designation.

(ii) Quarterly monitoring for gross beta particle activity is based on the analysis of monthly samples or the analysis of a composite of three monthly samples.

(iii) For iodine-131, a composite of five consecutive daily samples shall be analyzed once each quarter. More frequent monitoring may be required if iodine-131 is detected.

(iv) Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples.

(v) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at an entry point has a running annual average less than or equal to 15 pCi/l, the Department may reduce the frequency of monitoring for contaminants prescribed in subparagraph (B)(i) of this subsection at that entry point to every three years.

(C) For systems in the vicinity of a nuclear facility, the Department may allow the substitution of appropriate environmental surveillance data taken in conjunction with operation of a nuclear facility for direct monitoring of man-made radioactivity by the water supplier where such data is applicable to a particular Community water system. In the event of a release, monitoring must be done at the water system's entry points.

(D) Systems may analyze for naturally occurring potassium-40 beta particle activity from the same or equivalent sample used for the gross beta

particle activity analysis. Systems are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/l) by a factor of 0.82.

(E) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with OAR 333-061-0030(5). Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

(F) Systems must monitor monthly at the entry point(s) which exceed the MCL listed in OAR 333-061-0030(5) beginning the month after the exceedance occurs. Systems must continue monthly monitoring until the system has established, by a rolling average of three monthly samples, that the MCL is being met. Systems who establish that the MCL is being met must return to quarterly monitoring until they meet the requirements set forth in (b)(A)(ii) or (b)(B)(v) of this rule.

(c) General monitoring and compliance requirements for radionuclides.

(A) The Department may require more frequent monitoring than specified in paragraphs (a) and (b) of this section, or may require confirmation samples at its discretion. The results of the initial and confirmation samples will be averaged for use in compliance determinations.

(B) Each system shall monitor at the time designated by the Department during each compliance period. To determine compliance with 333-061-0030(5), averages of data shall be used and shall be rounded to the same number of significant figures as the MCL of the contaminant in question.

(C) Compliance.

(i) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. If the average of any sampling point is greater than the MCL, then the system is out of compliance with the MCL.

(ii) For systems monitoring more than once per year, if any sample result will cause the running average to exceed the MCL at any entry point, the system is out of compliance with the MCL immediately.

(iii) Systems must include all samples taken and analyzed under the provisions of this section in determining compliance, even if that number is greater than the minimum required.

(iv) If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

(v) If a sample is less than the detection limit, zero will be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium-226 and/or uranium. In that case, if the gross alpha particle activity result is less than detection, 1/2 the detection limit will be used to calculate the annual average.

(D) The Department has the discretion to delete results of obvious sampling or analytical errors.

(E) When the average annual maximum contaminant level for radionuclides as specified in Table 5 is exceeded, the water supplier shall, within 48 hours, report the analysis results to the Department as prescribed in OAR 333-061-0040 and initiate the public notification procedures prescribed in OAR 333-061-0042(2)(b)(A).

(7) Secondary contaminants:

(a) The levels listed in Table 6 of OAR 333-061-0030 represent reasonable goals for drinking water quality, but routine sampling for these secondary contaminants is not required.

(b) The Department may however, require sampling and analysis under the following circumstances:

(A) User complaints of taste, odor or staining of plumbing fixtures.

(B) Where treatment of the water is proposed and the levels of secondary contaminants are needed to determine the method and degree of treatment.

(C) Where levels of secondary contaminants are determined by the Department to present an unreasonable risk to health.

(c) If the results of the analyses do not exceed levels for secondary contaminants, listed in Table 6 of OAR 333-061-0030, subsequent sampling and analysis shall be at the discretion of the Department;

(d) If the results of the analyses indicate that the levels for secondary contaminants, listed in Table 6 of OAR 333-061-0030 are exceeded, the Department shall determine whether the contaminant levels pose an unreasonable risk to health or interfere with the ability of a water treatment facil-

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ity to produce a quality of water complying with the Maximum Contaminant Levels of these rules and specify follow-up actions to be taken.

(e) During the period while any measures called for in subsection (7)(d) of this rule are being implemented, the water supplier shall follow the procedures relating to variances and permits which are prescribed in OAR 333-061-0045.

(8) Monitoring of disinfectant residuals:

(a) For public water systems where continuous disinfection is practiced, the water supplier shall maintain a detectable residual disinfectant throughout the system and shall measure and record the residual daily at one or more representative points;

(b) Where chlorine is used as the disinfectant, the measurement of residual chlorine shall be by the DPD method in accordance with Standard Methods for the Examination of Water and Waste-water, and shall measure the free chlorine residual or total chlorine residual as applicable;

(c) The water supplier shall maintain a summary report of the daily residual disinfectant measurements and shall retain this summary report at a convenient location within or near the area served by the water system.

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

[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 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 23-26-90, 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 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 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 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0040

Reporting and Record Keeping

(1) Reporting requirements:

(a) Any person who has reasonable cause to believe that his or her actions have led to contamination of a public water system shall report that fact immediately to the water supplier and the Department.

(b) Results of analyses required by OAR 333-061-0036 and performed by an approved laboratory shall be reported to the Department by the water supplier, unless direct laboratory reporting is authorized by the water supplier, within 10 days after the end of the month, or within 10 days after the end of the required monitoring period, except that analyses indicating any positive coliform bacteria or any other analytical result which exceeds a maximum contaminant level shall be reported to the Department within (24) hours or by the next business day after the results are reported to the water supplier.

(c) If the water system fails to conduct monitoring as required in 333-061-0036 the water system must notify the public as prescribed in 333-061-0042.

(d) The water supplier shall report to the Department within (24) hours the reports on any substance or pathogenic organisms found in the water that has caused or is likely to cause physical suffering or illness.

(e) The water supplier using a surface water source or a groundwater source under direct influence of surface water which provides filtration treatment shall report monthly beginning June 29, 1993 or when filtration is installed, whichever is later, to the Department the results of any test, measurement or analysis required by these rules that is performed on site (e.g., turbidity, "CT" parameters and the lowest disinfectant residual concentrations entering the distribution system and in the distribution system for each day), by trained personnel within 10 days after the end of the month.

(A) All systems using surface water or groundwater under the direct influence of surface water shall consult with the Department within twenty-four (24) hours, after learning:

(i) That the turbidity exceeded 5 NTU;

(ii) Of a waterborne disease outbreak potentially attributable to that water system;

(iii) That the disinfectant residual concentration in the water entering the distribution system fell below 0.2 mg/l and whether or not the residual was restored to at least 0.2 mg/l within four hours.

(B) In addition to the reporting and recordkeeping requirements in paragraph (1)(e)(A) of this rule, a public water system which provides conventional filtration treatment or direct filtration serving at least 10,000 people must report monthly to the Department the information specified in paragraphs (B)(i) and (ii) of this subsection. Public water systems which provide filtration treatment other than conventional filtration treatment, direct filtration, slow sand filtration, and diatomaceous earth filtration, regardless of population served, must also meet the requirements of para-

graph (1)(e)(A) of this rule and must report monthly to the Department the information specified in paragraph (B)(i) of this subsection.

(i) Turbidity measurements as required by OAR 333-061-0030(3) must be reported within 10 days after the end of each month the system serves water to the public. Information that must be reported includes:

(I) The total number of filtered water turbidity measurements taken during the month;

(II) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified by OAR 333-061-0030(3)(b)(A) through (D) ;

(III) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the Department specified in OAR 333-061-0030(3)(b)(D).

(ii) Water systems must maintain the results of individual filter monitoring for at least three years. Water systems must report that they have conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Water systems must also report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (B)(ii)(I) through (IV) of this subsection. Water systems that use lime softening may apply to the Department for alternative exceedance levels for the levels specified in paragraphs (B)(ii)(I) through (IV) of this subsection if the water system can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(I) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the water system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the water system must either produce a filter profile for the filter within 7 days of the exceedance (if the water system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(II) For any individual filter that has a measured turbidity level of greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first four hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the system must report the filter number, the turbidity, and the date(s) on which the exceedance occurred. In addition, the system must either produce a filter profile for the filter within 7 days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(III) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of three consecutive months, the water system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the water system must conduct a self-assessment of the filter within 14 days of the exceedance and report that the self-assessment was conducted. The self assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

(IV) For any individual filter that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of two consecutive months, the water system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the water system must arrange to have a comprehensive performance evaluation by the Department or a third party approved by the Department conducted no later than 30 days following the exceedance and have the evaluation completed and submitted to the Department no later than 90 days following the exceedance.

(iii) If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system must inform the Department as soon as possible, but no later than the end of the next business day.

(iv) If at any time the turbidity in representative samples of filtered water exceed the maximum level set by the Department as specified in OAR 333-061-0030(3)(b)(D) for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the water system must inform the Department as soon as possible, but no later than the end of the next business day.

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(C) In addition to the reporting and recordkeeping requirements in paragraph (1)(e)(A) of this rule, a public water system which provides conventional filtration treatment or direct filtration treatment serving less than 10,000 people must report monthly to the Department the information specified in paragraphs (1)(e)(B)(i) of this rule and beginning January 1, 2005 the information specified in (1)(e)(C)(i) of this rule. Public water systems which provide filtration treatment other than conventional filtration treatment, direct filtration, slow sand filtration, and diatomaceous earth filtration regardless of population served must also meet the requirements of (1)(e)(A) of this rule and must report monthly to the Department the information specified in paragraph (B)(i) of this subsection.

(i) Water systems must maintain the results of individual filter monitoring for at least three years. Water systems must report that they have conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Water systems must also report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (C)(i)(I) through (III) of this subsection. Water systems that use lime softening may apply to the Department for alternative exceedance levels for the levels specified in paragraphs (C)(i)(I) through (III) of this subsection if the water system can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(I) If the turbidity of an individual filter (or the turbidity of the combined filter effluent (CFE) for systems with 2 or less filters that monitor CFE in lieu of individual filter monitoring) is greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the water system must report to the Department by the 10th day of the following month the filter number(s), the turbidity value(s) that exceeded 1.0 NTU, the corresponding date(s) of occurrence, and the cause (if known) for the elevated turbidity values. The Department may request the water system produce a turbidity profile for the filter(s) in question.

(II) If the turbidity of an individual filter (or the turbidity of the combined filter effluent (CFE) for systems with 2 or less filters that monitor CFE in lieu of individual filter monitoring) is greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart for 3 consecutive months, the water system must conduct a filter self-assessment within 14 days of the date the turbidity exceeded 1.0 NTU during the third month, unless a CPE is performed in lieu of a filter self-assessment. Systems with 2 filters monitoring the CFE must conduct a filter self-assessment for both filters. The self-assessment must consist of the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report. When a self-assessment is required, the water system must report the date the self-assessment was triggered, the date the self-assessment was completed, and the conclusion(s) of the self-assessment by the 10th of the following month or 14 days after the self-assessment was triggered only if the self-assessment was triggered during the last four days of the month.

(III) If the turbidity of an individual filter (or the turbidity of the combined filter effluent (CFE) for systems with 2 or less filters that monitor CFE in lieu of individual filter monitoring) is greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart for 2 consecutive months, the water system must report these turbidity results to the Department by the 10th of the following month and arrange to have a comprehensive performance evaluation (CPE) by the Department or a third party approved by the Department conducted within 60 days of the date the turbidity exceeded 2.0 NTU during the second month. The CPE report must be submitted to the Department no later than 120 days following the date the turbidity exceeded 2.0 NTU during the second month. A CPE is not needed if the Department or approved third party has conducted a CPE within the last 12 months or the Department and the water system are jointly participating in an on-going Comprehensive Technical Assistance (CTA) project as part of the Composite Correction Program with the water system. When a CPE is required, the water system must report that a CPE is required and the date that the CPE was triggered by the 10th day of the following month.

(f) The water supplier using a surface water source or a groundwater source under direct influence of a surface source which does not provide filtration treatment shall report according to subsection (1)(e) of this rule in addition to the requirements of this subsection. Monthly reporting to the Department will begin January 1, 1991 for systems using surface water sources and January 1, 1991 or 6 months after the Department determines

surface influence for systems using groundwater under the direct influence of surface water.

(A) Report to the Department within 10 days after the end of each month, the results or analysis of:

(i) Fecal coliform and/or total coliform bacteria test results on raw (untreated) source water.

(ii) Daily disinfection "CT" values including parameters such as pH measurements, temperature, and disinfectant residuals at the first customer used to compute the "CT" values.

(iii) Daily determinations using the "CT" values of the adequacy of disinfectant available for inactivation of *Giardia lamblia* or viruses as specified in OAR 333-061-0032(1)(a).

(B) Report to the Department within 10 days after the end of each Federal Fiscal year (September 30), the results of:

(i) The watershed control program requirements as specified in OAR 333-061-0032(2)(c)(B).

(ii) The on-site inspection summary requirements as specified in OAR 333-061-0032(2)(c)(C).

(g) All Community and Non-Transient Non-Community public water systems shall report all of the following information pertaining to lead and copper to the Department in accordance with the requirements of this subsection.

(A) Except as provided in subparagraph (vii) of this paragraph, a public water system shall report the information below for all tap water samples and for all water quality parameter samples within 10 days following the end of each applicable monitoring period.

(i) The results of all tap samples for lead and copper including the location of each site and the criteria under which the site was selected for the system's sampling pool. With the exception of initial tap sampling, the system shall designate any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed. By the applicable date specified in OAR 333-061-0036(2)(d)(D)(i) for commencement of initial monitoring, each Community Water System which does not complete its targeted sampling pool meeting the criteria for tier 1 sampling sites shall send a letter to the Department justifying its selection of tier 2 and/or tier 3 sampling sites. By the applicable date specified in OAR 333-061-0036(2)(d)(D)(i) for commencement of initial monitoring, each Non-Transient Non-Community water system which does not complete its sampling pool meeting the criteria for tier 1 sampling sites shall send a letter to the Department justifying its selection of sampling sites.

(ii) A certification that each first draw sample collected by the water system is one-liter in volume and, to the best of their knowledge, has stood motionless in the service line, or in the interior plumbing of a sampling site, for at least six hours. Where residents collected samples, a certification that each tap sample collected by the residents was taken after the water system informed them of proper sampling procedures according to OAR 333-061-0036(2)(d)(B)(ii).

(iii) The results of all tap samples for pH, and where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica, and the results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters according to OAR 333-061-0036(2)(d)(F)(iii) through (vi).

(iv) Each water system that requests that the Department reduce the number and frequency of sampling shall provide the information required in OAR 333-061-0036(2)(d)(D)(iv).

(v) Documentation for each tap water lead and copper sample for which the water system requests invalidation.

(vi) The 90th percentile lead and copper tap water samples collected during each monitoring period.

(vii) A water system shall report the results of all water quality parameter samples collected for follow-up tap monitoring prescribed in OAR 333-061-0036(2)(d)(F)(iv) through (vii) during each six-month monitoring period within 10 days following the end of the monitoring period unless the Department specifies a more frequent monitoring requirement.

(B) A water system shall report the sampling results for all source water samples collected for lead and copper within the first 10 days following the end of each source water monitoring period according to OAR 333-061-0036(2)(d)(G).

(i) With the exception of the first round of source water sampling, the system shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the sampling point has changed.

(C) Corrosion control treatment reporting requirements. By the applicable dates according to OAR 333-061-0034(2)(a) through (e), systems

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shall report the following information: for systems demonstrating that they have already optimized corrosion control, the information required in OAR 333-061-0034(2)(d)(B) or (C); for systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment according to OAR 333-061-0034(3)(a); for systems required to evaluate the effectiveness of corrosion control treatments, the information required in OAR 333-061-0034(3)(c) of these rules; for systems required to install optimal corrosion control designated by the Department according to OAR 333-061-0034(3)(i), a letter certifying that the system has completed the installation.

(D) Source water treatment reporting requirements. By the applicable dates according to OAR 333-061-0034(4)(a), systems shall report the following information to the Department: the system's recommendation regarding source water treatment if required according to OAR 333-061-0034(4)(b)(A); for systems required to install source water treatment according to OAR 333-061-0034(4)(b)(B), a letter certifying that the system has completed the installation of the treatment designated by the Department within 24 months after the Department designated the treatment.

(E) Public education program reporting requirements.

(i) Any water system that is subject to the public education requirements in OAR 333-061-0034(5) shall, within ten days after the end of each period in which the system is required to perform public education tasks in accordance with OAR 333-061-0034(5)(d), send written documentation to the Department that contains:

(I) A demonstration that the system has delivered the public education materials that meet the content and delivery requirements specified in OAR 333-061-0034(5)(a) through (d); and

(II) A list of all the newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public education materials during the period in which the system was required to perform public education tasks.

(ii) Unless required by the Department, a system that previously has submitted the information in subparagraph (i)(II) of this paragraph need not resubmit the information, as long as there have been no changes in the distribution list and the system certifies that the public education materials were distributed to the same list submitted previously.

(F) Any system which collects sampling data in addition to that required by this subsection shall report the results to the Department within the first ten days following the end of the applicable monitoring period under OAR 333-061-0036(2)(d)(A) through (H) during which the samples are collected.

(G) Any water system deemed to have optimized corrosion control or any water system subject to reduced monitoring, shall send written documentation to the Department describing the addition of any new source or change in treatment prior to implementation of the change.

(H) Each ground water system that limits water quality parameter monitoring to a subset of entry points shall provide written correspondence to the Department that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system. This correspondence must be submitted to the Department prior to commencement of such monitoring.

(h) The water supplier shall report to the Department the results of any test, measurement or analysis required by these rules that is performed on site (e.g. supplemental fluoride) by trained personnel within 10 days after the end of the month, except that reports which indicate that fluoride levels exceed 4.0 mg/l shall be reported within 48 hours:

(i) The water supplier shall submit to the Department within 10 days after completing any public notification action as prescribed in OAR 333-061-0042 a representative copy of each type of notice distributed to the water users or made available to the public and the media along with certification that the system has fully complied with the distribution and public notification requirements.

(j) Water systems required to sample quarterly or more frequently must report to the Department within 10 days after the end of each quarter in which samples were collected. Water systems required to sample less frequently than quarterly must report to the Department within 10 days after the end of each monitoring period in which samples were collected.

(A) Disinfection byproducts. Water systems must report the information specified in **Table 25** as follows: [Table not included. See ED. NOTE.]

(B) Disinfectants. Water systems must report the information specified in **Table 26** as follows: [Table not included. See ED. NOTE.]

(C) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Water systems must report the information specified in **Table 27** as follows: [Table not included. See ED. NOTE.]

(k) Systems using surface water or GWUDI sources must report to the Department or local county health department within 45 days of receiving a sanitary survey report or comprehensive performance evaluation report. Failure to report to the Department requires a Tier 2 public notice as prescribed in OAR 333-061-0042(2)(b)(D).

(2) Record Maintenance by Water Suppliers:

(a) Water suppliers of public water systems shall retain records relating to the quality of the water produced and the condition of the physical components of the system. These records shall be kept at a convenient location within or near the area served by the water system;

(b) Records of bacteriological analyses shall be kept for at least 5 years and records of chemical analyses, secondary contaminants, turbidity and radioactive substances shall be kept for at least 10 years. Data may be transferred to tabular summaries provided the following information is included:

(A) Date, place and time of sampling, and the name of the person who collected the sample;

(B) Identification of the sample as to whether it was a routine finished water sample, repeat sample, raw water sample or special purpose sample;

(C) Date and time of the analysis, the laboratory and person performing the analysis; and,

(D) Analytical method used and results of the analysis.

(c) Records of actions taken to correct items of non-compliance shall be kept for at least 3 years after the last action taken with respect to the particular violation;

(d) Reports, summaries or communications on sanitary surveys shall be kept for at least 10 years;

(e) Records concerning variances or permits shall be kept for at least 5 years after the expiration of the variance or permit;

(f) Records of residual disinfectant measurements shall be kept for at least 2 years.

(g) All public water systems subject to the requirements of subsection (1)(f) of this rule shall retain the original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Department determinations, and any other information required for no fewer than 12 years.

(h) Copies of public notices issued pursuant to OAR 333-061-0042 and certifications made to the Department must be kept for three years after issuance.

(i) Water systems using surface water or groundwater under the direct influence of surface water that uses conventional filtration treatment or direct filtration treatment and that recycles spent filter backwash water, thickener, supernatant, or liquids from dewatering processes must collect and retain on file recycle flow information specified in paragraphs (i)(A) through (F) of this rule for review and evaluation by the Department beginning June 8, 2004:

(A) Copy of the recycle notification and information submitted to the Department as required by OAR 333-061-0032(10)(b);

(B) List of all recycle flows and the frequency with which they are returned;

(C) Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes;

(D) Typical filter run length and a written summary of how filter run length is determined;

(E) The type of treatment provided for the recycle flow;

(F) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.

(j) For systems required to compile a disinfection profile, the results of the profile (including raw data and analysis) must be kept indefinitely as well as the disinfection benchmark (including raw data and analysis) determined from the profile.

(3) Records Kept by the Department.

(a) Records of turbidity measurements must be kept for not less than one year. The information retained must be set forth in a form which makes possible comparison with the limits specified by OAR 333-061-0030, 0032, and 0036.

(b) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness in accordance with OAR 333-061-0032(3) or (4), 0036(4)(a)(C) through (F), or 0036(4)(b) (B)

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through (C) of these rules must be kept for not less than one year. Records of decisions made on a system-by-system and case-by-case basis must be made in writing and kept by the Department.

(c) Any decisions made in accordance with consultations made with the Department concerning modifications to disinfection practices including the status of the consultation.

(d) Records of decisions that a water system using alternative filtration technologies, as determined by OAR 333-061-0030(3)(b)(D), can consistently achieve a 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. The decisions must include enforceable turbidity limits for each water system by the Department. A copy of the decision must be kept until the decision is reversed or revised. The Department must provide a copy of the decision to the water system.

(e) Records of water systems required to do a filter self-assessment, required to conduct a comprehensive performance evaluation as required by section (1)(d) of this rule, or required to participate in the Composite Correction Program.

(f) Records of the Department's determinations, including all supporting information and an explanation of the technical basis for the control of disinfectants and disinfection byproducts. These records must also include interim measures toward installation.

(A) Records of water systems that are installing GAC or membrane technology in accordance with OAR 333-061-0030(2)(b)(D). These records must include the date by which the water system is required to have completed installation.

(B) Records of water systems required to meet alternative minimum TOC removal requirements or for whom the Department has determined that the source water is not amenable to enhanced coagulation in accordance with OAR 333-061-0032(9) (e)(C) and (D), respectively. These records must include the alternative limits and rationale for establishing the alternative limits.

(C) Records of water systems using surface water or groundwater under the direct influence of surface water using conventional treatment meeting any of the alternative compliance criteria specified in OAR 333-061-0032(9)(d)(A).

(g) Monitoring plans for water systems using surface water or groundwater under the direct influence of surface water serving more than 3,300 persons in accordance with OAR 333-061-0036(3)(b)(K).

(h) Records of decisions made on a water system-by-water system and case-by-case basis under provisions of these rules must be made in writing and kept by the Department.

(A) Records of decisions made under this paragraph shall be kept for 40 years (or until one year after the decision is reversed or revised) and a copy of the decision must be provided to the water system:

(i) Any decisions made to approve alternate recycle locations, require modifications to recycle return locations, or require modifications to recycle practices.

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

Stat. Auth.: ORS 448.131 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.175 & 448.273

Hist.: HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; 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 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. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0043

Consumer Confidence Reports

This rule establishes the minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner. For the purpose of this rule, customers are defined as billing units or service connections to which water is delivered by a Community Water System.

(1) Delivery deadlines:

(a) Community water systems must deliver their first report by October 19, 1999, its second report by July 1, 2000, and subsequent reports by July 1, annually thereafter. The first report, and all subsequent reports, must contain data collected during, or prior to, the previous calendar year;

(b) A new community water system must deliver its first report by July 1 of the year after its first full calendar year in operation and annually thereafter;

(c) A community water system that sells water to another community water system must deliver the applicable information to the buyer system:

(A) No later than April 19, 1999, by April 1, 2000, and by April 1 annually thereafter; or

(B) On a date mutually agreed upon by the seller and the purchaser, and specifically included in a contract between the parties.

(2) Content of the Reports:

(a) Each community water system must provide to its customers an annual report that contains the information specified in sections (2), (3) and (4) of this rule;

(b) Each report must identify the source(s) of the water delivered by the community water system by providing information on:

(A) The type of water: e.g., surface water, ground water; and

(B) The commonly used name (if any) and location of the body (or bodies) of water.

(c) If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it. In addition, systems are encouraged to highlight in the report significant sources of contamination in the source water area if they have readily available information. Where a system has received a source water assessment from the Department, the report must include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the Department or written by the operator;

(d) Each report must contain the following definitions:

(A) Maximum Contaminant Level Goal or MCLG: The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety;

(B) Maximum Contaminant Level or MCL: The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

(C) Variance: A system operating under a variance as prescribed in OAR 333-061-0045 must include the following definition in its report: Variances: State permission not to meet an MCL or a treatment technique under certain conditions;

(D) Treatment Technique or Action Level: A system which has a detection for a contaminant for which EPA has set a treatment technique or an action level must include one or both of the following definitions as applicable:

(i) Treatment Technique: A required process intended to reduce the level of a contaminant in drinking water;

(ii) Action Level: The concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

(E) Maximum Residual Disinfectant Level Goal or MRDLG: The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(F) Maximum Residual Disinfectant Level or MRDL: The highest level of disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(3) Detected Contaminants:

(a) The following information must be included in each report for contaminants subject to mandatory monitoring (except *Cryptosporidium*). Detected means at or above the detection level prescribed by each EPA approved analytical method set forth in 40 CFR 141:

(A) Contaminants subject to an MCL, action level, MRDL, or treatment technique (regulated contaminants);

(B) Unregulated contaminants for which monitoring is required; and

(b) The data relating to these contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results which a community water system chooses to include in its report must be displayed separately.

(c) The data must be derived from data collected to comply with state monitoring and analytical requirements during calendar year 1998 for the first report and subsequent calendar years thereafter except that:

(A) Where a system is allowed to monitor for regulated contaminants less often than once a year, the table(s) must include the date and results of the most recent sampling and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulation. No data older than 5 years need be included.

(d) For detected regulated contaminants (listed in Table 28 of this rule), the table(s) in the report must contain:

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(A) The MCL for that contaminant expressed as a number equal to or greater than 1.0 (as provided in Table 28);

(B) The MCLG for that contaminant expressed in the same units as the MCL;

(C) If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report must include the definitions for treatment technique and/or action level, as appropriate, specified in paragraph (2)(d)(D) of this rule;

(D) For contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with OAR 333-061 and the range of detected levels, as follows:

(i) When compliance with the MCL is determined annually or less frequently: the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL;

(ii) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point: the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL;

(iii) When compliance with the MCL is determined on a system wide basis by calculating a running annual average of all samples at all sampling points: the average and range of detection expressed in the same units as the MCL;

(iv) When rounding of results to determine compliance with the MCL is allowed by the regulations, rounding should be done prior to multiplying the results by the factor listed in **Table 28** of this rule. [Table not included. See ED. NOTE.]

(e) Turbidity:

(A) When it is reported pursuant to OAR 333-061-0030(3)(a), 333-061-0032(2), and 333-061-0036(4)(a): the highest monthly value. The report should include an explanation of the reasons for measuring turbidity. This includes water systems currently without filtration treatment, but required to install filtration through a Notice of Violation and Remedial Order.

(B) When it is reported pursuant to OAR 333-061-0030(3): The highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in OAR 333-061-0030(3) for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity.

(f) Lead and copper: the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level.

(g) Total coliform:

(A) The highest monthly number of positive samples for systems collecting fewer than 40 samples per month; or

(B) The highest monthly percentage of positive samples for systems collecting at least 40 samples per month.

(h) Fecal coliform: the total number of positive samples.

(i) The likely source(s) of detected contaminants to the best of the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the operator. If the operator lacks specific information on the likely source, the report must include one or more of the typical sources for that contaminant listed in Table 29 which are most applicable to the system.

(j) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table should contain a separate column for each service area and the report should identify each separate distribution system. Alternatively, systems could produce separate reports tailored to include data for each service area.

(k) The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or treatment techniques and the report must contain a clear and readily understandable explanation of the violation, the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language in Table 29 of this rule.

(l) For detected unregulated contaminants for which monitoring is required (except *Cryptosporidium*), the table(s) must contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.

(m) Information on *Cryptosporidium*, radon, and other contaminants:

(A) If the system has performed any monitoring for *Cryptosporidium*, including monitoring performed to satisfy the requirements of the Federal

Information Collection Rule CFR 141.143 (microbials) which indicates that *Cryptosporidium* may be present in the source water or the finished water, the report must include:

- (i) A summary of the results of the monitoring, and
- (ii) An explanation of the significance of the results.

(B) If the system has performed any monitoring for radon which indicates that radon may be present in the finished water, the report must include:

- (i) The results of the monitoring; and
- (ii) An explanation of the significance of the results.

(C) If the system has performed additional monitoring which indicates the presence of other contaminants in the finished water, the system is strongly encouraged to report any results which may indicate a health concern. To determine if results may indicate a health concern, EPA recommends that systems find out if EPA has proposed a National Primary Drinking Water Regulation or issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline (800-426-4791). EPA considers detects above a proposed MCL or health advisory level to indicate possible health concerns. For such contaminants, EPA recommends that the report include:

(i) The results of the monitoring; and

(ii) An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation. **Table 29:** [Table not included. See ED. NOTE.]

(n) Compliance with OAR 333-061: In addition to subsection (3)(k) of this rule, the report must note any violation that occurred during the year covered by the report of a requirement listed below, and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation.

(A) Monitoring and reporting of compliance data;

(B) Filtration and disinfection prescribed by OAR 333-061-0032: For systems which have failed to install adequate filtration or disinfection equipment or processes which constitutes a violation or have an equipment failure constituting a violation, the report must include the following language as part of the explanation of potential adverse health effects: Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches;

(C) Lead and copper control requirements: For systems which fail to take one or more actions prescribed by OAR 333-061-0034 the report must include the applicable language in Table 29 of this rule for lead, copper, or both;

(D) Treatment techniques for Acrylamide and Epichlorohydrin: For systems which violate the requirements of OAR 333-061-0030(7), the report must include the relevant health effects language in Table 29 of this rule.

(E) Recordkeeping of compliance data;

(F) Special monitoring requirements prescribed by OAR 333-061-0036(3)(b) and 333-061-0036(2)(b), (g);

(G) Violation of the terms of a variance, administrative order or judicial order.

(o) Variances: If a system is operating under the terms of a variance as prescribed in OAR 333-061-0045, the report must contain:

(A) An explanation of the reasons for the variance;

(B) The date on which the variance was issued;

(C) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance; and

(D) A notice of any opportunity for public input in the review, or renewal, of the variance.

(p) Additional information:

(A) The report must contain a brief explanation regarding contaminants which may reasonably be expected to be found in drinking water including bottled water. This explanation may include the language in subparagraphs (A)(i), (ii) and (iii) of this subsection, or systems may use their own comparable language. The report also must include the language of subparagraph (A)(iv) of this subsection.

(i) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity;

(ii) Contaminants that may be present in source water include:

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(I) Microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife;

(II) Inorganic contaminants, such as salts and metals, which can be naturally-occurring or result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming;

(III) Pesticides and herbicides, which may come from a variety of sources such as agriculture, urban stormwater runoff, and residential uses;

(IV) Organic chemical contaminants, including synthetic and volatile organic chemicals, which are by-products of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems;

(V) Radioactive contaminants, which can be naturally-occurring or be the result of oil and gas production and mining activities.

(iii) In order to ensure that tap water is safe to drink, EPA prescribes regulations which limit the amount of certain contaminants in water provided by public water systems. FDA regulations establish limits for contaminants in bottled water which must provide the same protection for public health;

(iv) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800-426-4791).

(B) The report must include the telephone number of the owner, operator, or designee of the community water system as a source of additional information concerning the report;

(C) In communities with a large proportion of non-English speaking residents the report must contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language;

(D) The report must include information (e.g., time and place of regularly scheduled board meetings) about opportunities for public participation in decisions that may affect the quality of the water;

(E) The systems may include such additional information as they deem necessary for public education consistent with, and not detracting from, the purpose of the report.

(4) Required additional health information:

(a) All reports must prominently display the following language: Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium* and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).

(b) Special notification is required for water systems with arsenic detections as follows:

(A) Water systems that detect arsenic at levels above 5 micrograms/l, and up to and including 10 micrograms/l, must include in its report a short informational statement about arsenic, using language such as: While your drinking water meets the EPA standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the costs of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.

(B) Until January 22, 2006, water systems that detect arsenic at levels above 10 micrograms/l, but do not exceed 50 micrograms/l must include the arsenic health effects language prescribed in table 29.

(C) Water systems may write their own educational statements, but only in consultation with the Department of Human Services.

(c) A system which detects nitrate at levels above 5 mg/l, but does not exceed the MCL:

(A) Must include a short informational statement about the impacts of nitrate on children using language such as: Nitrate in drinking water at levels above 10 mg/l is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agri-

cultural activity. If you are caring for an infant you should ask advice from your health care provider.

(B) May write its own educational statement, but only in consultation with the Department.

(d) Systems which detect lead above the action level in more than 5%, and up to and including 10%, of homes sampled:

(A) Must include a short informational statement about the special impact of lead on children using language such as: Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for 30 seconds to 2 minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline (800-426-4791).

(B) May write its own educational statement, but only in consultation with the Department.

(e) Community water systems that detect TTHM above 0.080 mg/l, but below the MCL prescribed in OAR 333-061-0030(2), and monitor as prescribed in OAR 333-061-0036(3)(b), must include health effects language for TTHMs prescribed in paragraph (6)(e)(S) of this rule.

(5) Report delivery and recordkeeping:

(a) Except as provided in subsection (g) of this section, each community water system must mail or otherwise directly deliver one copy of the report to each customer.

(b) The system must make a good faith effort to reach consumers who do not get water bills, using means recommended by the Department. EPA expects that an adequate good faith effort will be tailored to the consumers who are served by the system but are not bill-paying customers, such as renters or workers. A good faith effort to reach consumers would include a mix of methods appropriate to the particular system such as: Posting the reports on the Internet; mailing to postal patrons in metropolitan areas; advertising the availability of the report in the news media; publication in a local newspaper; posting in public places such as cafeterias or lunch rooms of public buildings; delivery of multiple copies for distribution by single-biller customers such as apartment buildings or large private employers; delivery to community organizations.

(c) No later than the date the system is required to distribute the report to its customers, each community water system must mail a copy of the report to the Department, followed within 3 months by a certification that the report has been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to the Department.

(d) No later than the date the system is required to distribute the report to its customers, each community water system must deliver the report to any other agency or clearinghouse identified by the Department.

(e) Each community water system must make its reports available to the public upon request.

(f) Each community water system serving 100,000 or more persons must post its current year's report to a publicly-accessible site on the Internet.

(g) The Governor of a State or his designee, can waive the requirement of paragraph (a) of this section for community water systems serving fewer than 10,000 persons.

(A) Such systems must:

(i) Publish the reports in one or more local newspapers serving the area in which the system is located;

(ii) Inform the customers that the reports will not be mailed, either in the newspapers in which the reports are published or by other means approved by the State; and

(iii) Make the reports available to the public upon request.

(B) Systems serving 500 or fewer persons may forego the requirements of subparagraphs (A)(i) and (ii) of this subsection if they provide notice at least once per year to their customers by mail, door-to-door delivery or by posting in an appropriate location that the report is available upon request.

(h) Any system subject to this rule must retain copies of its consumer confidence report for no less than 5 years.

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

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 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 12-2003,

f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04

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333-061-0050

Construction Standards

(1) General:

(a) These standards shall apply to the construction of new public water systems and to major additions or modifications to existing public water systems and are intended to assure that the system facilities, when constructed, will be free of public health hazards and will be capable of producing water which consistently complies with the maximum contaminant levels;

(b) Public water systems which may not comply fully with these construction standards, shall be allowed to continue in operation and shall not be required to undertake alterations to existing facilities, unless the standard is listed as a significant deficiency as prescribed in OAR 333-061-0076(3) or maximum contaminant levels are being exceeded. Existing facilities are:

(A) Facilities at public water systems constructed or installed prior to August 21, 1981; and

(B) Facilities at public water systems which have been in continual use in or as a public water system and not inoperative for more than 1 year.

(c) Non-public water systems that are converted to public water systems shall be modified as necessary to conform to the requirements of this rule.

(d) Facilities at public water systems shall be designed and constructed in a manner such that contamination will be effectively excluded, and the structures and piping will be capable of safely withstanding external and internal forces acting upon them;

(e) Only materials designed for potable water service and meeting National Sanitation Foundation Standard 61, Section 9 — Drinking Water System Components — Health Effects (Revised September, 1994) or equivalent shall be used in those elements of the water system which are in contact with potable water;

(f) New tanks, pumps, equipment, pipe valves and fittings shall be used in the construction of new public water systems, major additions or major modifications to existing water systems. The Department may permit the use of used items when it can be demonstrated that they have been renovated and are suitable for use in public water systems;

(g) Prior to construction of new facilities, the water supplier shall submit plans to the Department for approval as specified in OAR 333-061-0060(1)(a).

(h) Construction may deviate from the requirements of this section provided that documentation is submitted, to the satisfaction of the Department, that the deviation is equal to or superior to the requirements of this section as specified in OAR 333-061-0055 (variances from construction standards).

(i) A public water system or other Responsible Management Authority using groundwater, or groundwater under the direct influence of surface water, derived from springs, confined or unconfined wells that wish to have a state certified wellhead protection program shall comply with the requirements as specified in OAR 333-061-0057, 0060, and 0065, as well as OAR 340-040-0140 through 0200. Additional technical information is available in the **Oregon Wellhead Protection Guidance Manual**.

(j) All new groundwater sources are subject to consideration for potential direct influence of surface water as prescribed in OAR 333-061-0032(7).

(2) Groundwater:

(a) Wells:

(A) For the purpose of this rule, wells are defined as holes or other excavations that are drilled, dug or otherwise constructed for the purpose of capturing groundwater or groundwater in hydraulic connection with surface water as a source of public drinking water.

(B) The area within 100 feet of the well shall be owned by the water supplier, or a perpetual restrictive easement shall be obtained by the water supplier for all land (with the exception of public rights-of-way) within 100 feet of the well. The easement shall be recorded with the county in which the well is located and with the recorded deed to the property. A certified true copy shall be filed with the Department;

(C) Notwithstanding paragraph (2)(a)(A) of this rule, wells located on land owned by a public entity, (Federal, State, County, Municipality) which is not the water supplier, a permit issued by the public entity to the water supplier shall suffice in lieu of an easement. Said permit shall state that no existing or potential public health hazard shall be permitted within a minimum of 100 feet of a well site;

(D) Notwithstanding paragraph (2)(a)(A) of this rule, in those areas served by community gravity sanitary sewers, the area of ownership or control may be reduced to 50 feet;

(E) Public or private roadways may be allowed within 100 feet of a confined well, provided the well is protected against contamination from surface runoff or hazardous liquids which may be spilled on the roadway and is protected from unauthorized access;

(F) The following sanitary hazards are not allowed within 100 feet of a well which serves a public water system unless waived by the Department: any existing or proposed pit privy, subsurface sewage disposal drain field; cesspool; solid waste disposal site; pressure sewer line; buried fuel storage tank; animal yard, feedlot or animal waste storage; untreated storm water or gray water disposal; chemical (including solvents, pesticides and fertilizers) storage, usage or application; fuel transfer or storage; mineral resource extraction, vehicle or machinery maintenance or long term storage; junk/auto/scrap yard; cemetery; unapproved well; well that has not been properly abandoned or of unknown or suspect construction; source of pathogenic organisms or any other similar public health hazards. No gravity sewer line or septic tank shall be permitted within 50 feet of a well which serves a public water system. Clearances greater than indicated above shall be provided when it is determined by the Department that the aquifer sensitivity and degree of hazard require a greater degree of protection. Above-ground fuel storage tanks provided for emergency water pumping equipment may be exempted from this requirement by the Department provided that a secondary containment system is in place that will accommodate 125% of the fuel tank storage;

(G) Wells shall not be located at sites which are prone to flooding. In cases where the site is subject to flooding, the area around the well shall be mounded, and the top of the well casing shall be extended at least 2 feet above the anticipated 100-year (1%) flood level;

(H) Except as otherwise provided herein, wells shall be constructed in accordance with the general standards for the construction and maintenance of water wells in Oregon as prescribed in OAR Chapter 690, Departments 200 through 220;

(I) Wells as defined in paragraph (2)(a)(A) of this rule that are less than 12 feet in depth must be constructed so as to be cased and sealed from the surface to a minimum of three feet above the bottom of the well. The casing may consist of concrete or metal culvert pipe or other pre-approved materials. The seal shall be watertight, be a minimum of four inches in thickness and may consist of cement, bentonite or concrete (see concrete requirements prescribed in OAR 690-210-315). The construction and placement of these wells must comply with all requirements of this rule.

(J) Before a well is placed into operation as the source of supply at a public water system, laboratory reports as required by OAR rule 333-061-0036 shall be submitted by the water supplier;

(K) Water obtained from wells which exceed the maximum contaminant levels shall be treated as outlined in section (4) of this rule;

(L) The pump installation, piping arrangements, other appurtenances, and well house details at wells which serve as the source of supply for a public water system, shall meet the following requirements:

(i) The line shaft bearings of turbine pumps shall be water-lubricated, except that bearings lubricated with non-toxic approved food-grade lubricants may be permitted in wells where water-lubricated bearings are not feasible due to depth to the water;

(ii) Where turbine pumps are installed, the top of the casing shall be sealed into the pump motor. Where submersible pumps are installed, the top of the casing shall be provided with a watertight sanitary seal;

(iii) A casing vent shall be provided and shall be fitted with a screened return bend;

(iv) Provisions shall be made for determining the depth to water surface in the well under pumping and static conditions;

(v) A sampling tap shall be provided on the pump discharge line;

(vi) Piping arrangements shall include provisions for pumping the total flow from the well to waste;

(vii) A method of determining the total output of each well shall be provided. This requirement may be waived by the Department at confined wells which serve as the source of supply for Transient Non-Community water systems;

(viii) A reinforced concrete slab shall be poured around the well casing at ground surface. The slab shall be sloped to drain away from the casing;

(ix) The ground surface around the well slab shall be graded so that drainage is away from the well;

(x) The top of the well casing shall extend at least 12 inches above the concrete slab;

(xi) Provisions shall be made for protecting pump controls and other above-ground appurtenances at the well head. Where a wellhouse is installed for this purpose, it shall meet applicable building codes and shall

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be insulated, heated and provided with lights, except that where the well-house consists of a small removable box-like structure the requirement for lights may be waived by the Department;

(xii) The wellhouse shall be constructed so that the well pump can be removed.

(xiii) Wells equipped with pitless adaptors or units are not required to meet the requirements of paragraphs (L)(iii), (viii) and (xii) of this subsection.

(M) The area in the vicinity of a well, particularly the area uphill or upstream, shall be surveyed by the water supplier to determine the location and nature of any existing or potential public health hazards;

(N) The requirements with respect to land ownership, clearances from public health hazards, and protection against flooding for wells in an unconfined aquifer shall be the same or more restrictive than those prescribed for wells in confined aquifers, as determined by the Department.

(O) Before a well is placed into operation as the source of supply for a public water system, the following documents shall be submitted by the water supplier:

(i) Reports on pumping tests for yield and drawdown for unconfined wells;

(ii) Reports of laboratory analyses on contaminants in the water as required by OAR 333-061-0036;

(iii) Performance data on the pumps and other equipment;

(iv) Proposals for disinfection as required by section (5) of this rule, if applicable.

(v) Reports on determination of potential direct influence by surface water into groundwater source as prescribed in section (3) of this rule.

(b) Springs:

(A) In addition to those requirements under subsection (2)(a) of this rule, construction of spring supplies shall meet the following requirements:

(i) An intercepting ditch shall be provided above the spring to effectively divert surface water;

(ii) A fence shall be installed around the spring area unless other provisions are made to effectively prevent access by animals and unauthorized persons;

(iii) The springbox shall be constructed of concrete or other impervious durable material and shall be installed so that surface water is excluded;

(iv) The springbox shall be provided with a screened overflow which discharges to daylight, an outlet pipe provided with a shutoff valve, a bottom drain, an access manhole with a tightly fitting cover, and a curb around the manhole.

(v) Spring collection facilities that meet the definition of well in paragraph (2)(a)(A) of this rule must comply with construction requirements specified in paragraph (2)(a)(I) of this rule.

(B) Reports on flow tests shall be provided to establish the yield of springs.

(3) Surface water and groundwater under direct surface water influence source facilities:

(a) In selecting a site for an infiltration gallery, or for a direct intake from a stream, lake, or impounding reservoir, consideration shall be given to land use in the watershed. A sanitary survey of the watershed shall be made by the water supplier to evaluate natural and man-made factors which may affect water quality and investigations shall also be made of seasonal variations in water quality and quantity. A report giving the results of this survey shall be submitted for review and approval by the Department.

(b) A determination shall be made as to the status of water rights, and this information shall be submitted to the Department for review.

(c) Impounding reservoirs shall be designed and constructed so that they include the following features:

(A) The capacity shall be sufficient to meet projected demands during drought conditions;

(B) Outlet piping shall be arranged so that water can be withdrawn from various depths;

(C) Facilities shall be provided for releasing undesirable water.

(d) Direct intake structures shall be designed and constructed so that they include the following features:

(A) Screens shall be provided to prevent fish, leaves and debris from entering the system;

(B) Provisions shall be made for cleaning the screens, or self-cleaning screens shall be installed;

(C) Motors and electrical controls shall be located above flood level;

(D) Provisions shall be made to restrict swimming and boating in the vicinity of the intake;

(E) Valves or sluice gates shall be installed at the intake to provide for the exclusion of undesirable water when required.

(4) Water treatment facilities (other than disinfection):

(a) General:

(A) Water treatment facilities shall be capable of producing water which consistently does not exceed maximum contaminant levels. The type of treatment shall depend on the raw water quality. The Department shall make determinations of treatment capabilities based upon recommendations in the USEPA SWTR Guidance Manual.

(B) Investigations shall be undertaken by the water supplier prior to the selection or installation of treatment facilities to determine the physical, chemical and microbiological characteristics of the raw water as appropriate. These investigations shall include a determination of the seasonal variations in water quality, as well as a survey to identify potential sources of contamination which may affect the quality of the raw water.

(C) Water obtained from wells constructed in conformance with the requirements of these rules and which is found not to exceed the maximum contaminant levels, may be used without treatment at public water systems;

(D) Laboratory equipment shall be provided so that the water supplier can perform analyses necessary to monitor and control the treatment processes.

(b) Best Available Technology:

(A) Pilot studies or other supporting data shall be used to demonstrate the effectiveness of any treatment method other than that defined as best available technology. Pilot study protocol shall be approved beforehand by the Department. When point-of-use (POU) or point-of-entry (POE) devices are used for compliance, programs to ensure proper long-term operation, maintenance, and monitoring shall be provided by the water system to ensure adequate performance.

(B) The Department identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for volatile organic chemicals:

(i) Central treatment using packed tower aeration for all these chemicals.

(ii) Central treatment using granular activated carbon for all these chemicals except vinyl chloride.

(C) The Department identifies the following as the best available technology, treatment techniques or other means generally available for achieving compliance with the Maximum Contaminant Level for fluoride.

(i) Activated alumina absorption, centrally applied.

(ii) Reverse osmosis, centrally applied.

(D) The Department identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total coliforms.

(i) Protection of wells from contamination by coliforms by appropriate placement and construction;

(ii) Maintenance of a disinfectant residual throughout the distribution system;

(iii) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and maintaining a minimum pressure of 20 psi at all service connections.

(iv) Filtration treatment and/or disinfection of surface water or groundwater under the direct influence of surface water, or disinfection of groundwater using strong oxidants such as chlorine, chlorine dioxide, or ozone; and

(v) For systems using groundwater, compliance with the requirements of a Department-approved wellhead protection program.

(E) The Department identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for organic chemicals.

(i) Central treatment using packed tower aeration for Dibromochloropropane, Ethylene Dibromide, Hexachlorocyclopentadiene and Di(2-ethylhexyl) adipate.

(ii) Central treatment using granular activated carbon for all these chemicals except Trihalomethanes and Glyphosate.

(iii) Central treatment using oxidation (chlorination or ozonation) for Glyphosate.

(F) The Department identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for inorganic chemicals. Preoxidation may be required to convert Arsenic III to Arsenic V.

(i) Central treatment using coagulation/filtration for systems with 500 or more service connections for Antimony, Arsenic V (for systems with

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populations 501-10,000), Asbestos, Beryllium, Cadmium, Chromium, Mercury (influent concentration $\geq 10\mu\text{g/L}$), and Selenium (Selenium IV only).

(ii) Central treatment using direct and diatomite filtration for Asbestos.

(iii) Central treatment using granular activated carbon for Mercury.

(iv) Central treatment using activated alumina for Arsenic V (for systems with populations 10,000 or less), Beryllium, Selenium and Thallium.

(v) Central treatment using ion exchange for Arsenic V (for systems with populations 10,000 or less), Barium, Beryllium, Cadmium, Chromium, Cyanide, Nickel, Nitrate, Nitrite and Thallium.

(vi) Central treatment using lime softening for systems with 500 or more service connections for Arsenic V (for systems with populations of 501-10,000), Barium, Beryllium, Cadmium, Chromium (Chromium III only), Mercury (influent concentration $\geq 10\mu\text{g/L}$), Nickel and Selenium.

(vii) Central treatment using reverse osmosis for Antimony, Arsenic V (for systems with populations of 501-10,000), Barium, Beryllium, Cadmium, Chromium, Cyanide, Mercury (influent concentration $\geq 10\mu\text{g/L}$), Nickel, Nitrate, Nitrite, and Selenium.

(viii) Central treatment using corrosion control for Asbestos and Lead and Copper.

(ix) Central treatment using electro dialysis for Arsenic V (for systems with populations of 501-10,000), Barium, Nitrate, and Selenium.

(x) Central treatment using alkaline chlorination (pH 8.5) for Cyanide.

(xi) Central treatment using coagulation-assisted microfiltration for Arsenic V (for systems with populations 501-10,000).

(xii) Central treatment using oxidation/filtration for Arsenic V (to obtain high removals, iron to Arsenic ratio must be at least 20:1).

(xiii) Point-of-use treatment using activated alumina for Arsenic V (for systems with populations 10,000 or less).

(xiv) Point-of-use treatment using reverse osmosis for Arsenic V (for systems with populations 10,000 or less).

(G) The Department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for disinfection byproducts:

(i) Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant for total trihalomethanes.

(ii) Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant for HAA5s.

(iii) Control of ozone treatment process to reduce production of bromate for bromate concentrations.

(iv) Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels for chlorite.

(H) The Department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum residual disinfectant levels: Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

(I) The Department identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the MCLs for radionuclides.

(i) Central treatment using ion exchange for combined radium-226/228, beta particle/ photon activity and uranium.

(ii) Central treatment using reverse osmosis for combined radium-226/228, gross alpha particle activity, beta particle/photon activity, and uranium (for systems with populations 501-10,000).

(iii) Central treatment using lime softening for combined radium-226/228, and uranium (for systems with populations 501-10,000).

(iv) Central treatment using enhanced coagulation/filtration for uranium.

(v) Central treatment using activated alumina for uranium (for systems with populations of 10,000 or less).

(vi) Central treatment using greensand filtration for combined radium-226/228.

(vii) Central treatment using electro dialysis for combined radium-226/228.

(viii) Central treatment using pre-formed hydrous manganese oxide filtration for combined radium-226/228.

(ix) Central treatment using co-precipitation with barium for combined radium-226/228.

(x) Point-of-use treatment using ion exchange for combined radium-226/228, beta particle/photon activity, and uranium.

(xi) Point-of use treatment using reverse osmosis for combined radium-226/228, gross alpha particle activity, beta particle/ photon activity, and uranium (for systems with populations of 10,000 or less).

(c) Filtration of Surface Water Sources and Groundwater Sources Under the Direct Influence of Surface Water.

(A) All water systems using surface water or groundwater sources under the direct influence of surface water that fail to meet the criteria for avoiding filtration prescribed in OAR 33-061-0032(2) and (3) must meet all requirements of this subsection for installing filtration treatment.

(B) There are four standard filtration methods: conventional filtration, direct filtration, slow sand, and diatomaceous earth. Other filtration technologies are only acceptable if their efficiency at removing target organisms and contaminants can be demonstrated to be equal to or more efficient than these. The assumed log removals credited to filtration of *Giardia lamblia* and viruses will be based on recommendations in the **USEPA SWTR Guidance Manual**. For membrane filtration, removal credits shall be 2.5 log for *Giardia* and 2.0 for *Cryptosporidium*, as long as removal has been verified by a third party. The combination of filtration and disinfection must meet the inactivation levels prescribed in OAR 333-061-0032(1). Any water system wishing to challenge the assumed log removal credits must conduct demonstration studies based on the recommendations in the **USEPA SWTR Guidance Manual** and have the study protocol approved by the Department.

(C) Pilot studies shall be conducted by the water supplier to demonstrate the effectiveness of any filtration method other than conventional filtration. Pilot study protocol shall be approved in advance by the Department. Results of the pilot study shall be submitted to the Department for review and approval.

(D) Regardless of the filtration method used, the water system must achieve a minimum of 0.5-log reduction of *Giardia lamblia* and a 1.0-log reduction of viruses from disinfection alone after filtration treatment.

(E) All filtration systems shall be designed and operated so as to meet the requirements prescribed in OAR 333-061-0032(4) and (5). Design of the filtration system must be in keeping with accepted standard engineering references acknowledged by the Department such as the Great Lakes Upper Mississippi River "Recommended Standards for Water Works" technical reports by the International Reference Center for Community Water Supply and Sanitation, or publications from the World Health Organization. A list of additional references is available from the Department upon request.

(F) Systems that employ multiple filters shall be designed such that turbidity measurements are monitored for each filter independently of the other filter(s). Each filter shall have a provision to discharge effluent water as waste.

(G) Additional requirements for membrane filtration. Each membrane filter system must have a particle counter or laser turbidimeter installed after filtration for continuous integrity monitoring. Once operating, physical integrity testing must be done on each filter canister at least weekly, using pressure hold, diffusive air flow, bubble point, or sonic sensing testing. The operation and maintenance manual must include a diagnosis and repair plan such that the ability to remove pathogens is not compromised.

(d) Criteria and procedures for public water systems using point-of-entry devices.

(A) Public water systems may use point-of-entry devices to comply with maximum contaminant levels only if they meet the requirements of this section.

(B) It is the responsibility of the public water system to operate and maintain the point-of-entry treatment system.

(C) The public water system must develop and obtain Department approval for a monitoring plan before point-of-entry devices are installed for compliance. Under the plan approved by the Department, point-of-entry devices must provide health protection equivalent to central water treatment. "Equivalent" means that the water would meet all Maximum Contaminant Levels as prescribed in OAR 333-061-0030 and would be of acceptable quality similar to water distributed by a well-operated central treatment plant. Monitoring must include contaminant removal efficacy, physical measurements and observations such as total flow treated and mechanical condition of the treatment equipment.

(D) Effective technology must be properly applied under a plan approved by the Department and the microbiological safety of the water must be maintained.

(i) The water supplier must submit adequate certification of performance, field testing, and, if not included in the certification process, a rigorous engineering design review of the point-of-entry devices.

(ii) The design and application of the point-of-entry devices must consider the tendency for increase in heterotrophic bacteria concentrations in

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water treated with activated carbon. It may be necessary to use frequent backwashing, post-contractor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.

(iii) The point-of-entry device must be evaluated to assure that the device will not cause increased corrosion of lead and copper bearing materials located between the device and the tap that could increase contaminant levels of lead and copper at the tap.

(E) All consumers shall be protected. Every building connected to the system must have a point-of-entry device installed, maintained, and adequately monitored. The Department must be assured that every building is subject to treatment and monitoring, and that the rights and responsibilities of the public water system customer convey with title upon sale of property.

(5) Facilities for continuous disinfection:

(a) Water obtained from surface sources or groundwater sources under the direct influence of surface water shall, as a minimum, be provided with continuous disinfection before such water may be used as a source of supply for a public water system. Water obtained from wells constructed in conformance with the requirements of these rules and which is found not to exceed microbiological maximum contaminant levels, may be used without treatment at public water systems;

(b) Water obtained from wells or springs shall be considered groundwater unless determined otherwise by the Department. Wells and springs may be utilized without continuous disinfection if the construction requirements of section (2) of this rule are met and analyses indicate that the water consistently meets microbiological standards. A well or spring that is inadequately constructed and shows a history of microbiological contamination shall first be upgraded to meet current construction standards, and if microbiological contamination still persists, then continuous disinfection shall be provided prior to use in public water systems.

(c) In public water systems where continuous disinfection is required as the sole form of treatment, or as one component of more extensive treatment to meet the requirements prescribed in OAR 333-061-0032(1), the facilities shall be designed so that:

(A) The disinfectant applied shall be capable of effectively destroying pathogenic organisms; and

(B) The disinfectant is applied in proportion to flow; and

(C) Disinfectants, other than ultraviolet light disinfection treatment, shall be capable of leaving a residual in the water which can be readily measured and which continues to serve as an active disinfectant; and

(D) Sufficient contact time shall be provided to achieve "CT" values capable of the inactivations required by OAR 333-061-0032(1) For ultraviolet light disinfection treatment, sufficient irradiance expressed in milliWatts per square centimeter (mW/cm²) and exposure time expressed in seconds (s) shall be provided to achieve UV dose levels expressed as (mW/cm²) or milli-Joules per square centimeter (mJ/cm²) capable of the inactivations required by OAR 333-061-0032(1).

(d) When continuous disinfection, other than ultraviolet light disinfection, is required for reasons other than the treatment of surface water sources or groundwater sources under the direct influence of surface water, in addition to the requirements of paragraphs (5)(c)(A) through (C) of this rule, the facilities shall be designed so that:

(A) The primary disinfection treatment is sufficient to ensure at least 99.99 percent (4-log) inactivation and/or removal of viruses as determined by the Department, or;

(B) There is sufficient contact time provided to achieve disinfection under all flow conditions between the point of disinfectant application and the point of first water use:

(i) When chlorine is used as the primary disinfectant, the system shall be constructed to achieve a free chlorine residual of 0.2 mg/l after 30 minutes contact time under all flow conditions before first water use;

(ii) When ammonia is added to the water with the chlorine to form a chloramine as the disinfectant, the system shall be constructed to achieve a combined chlorine residual of at least 2.0 mg/l after 3 hours contact time under all flow conditions before first water use;

(e) Provisions shall be made to alert the water supplier before the chlorine supply is exhausted.

(f) Provisions shall be made for sampling the water before and after chlorination;

(g) Testing equipment shall be provided to determine the chlorine residual;

(h) Chlorinator piping shall be designed to prevent the contamination of the potable water system by backflow of untreated water or water having excessive concentrations of chlorine;

(i) Chlorine gas feeders and chlorine gas storage areas shall:

(A) Be enclosed and separated from other operating areas;

(B) Chlorine cylinders shall be restrained in position to prevent upset by chaining 100 and 150 pound cylinders two-thirds of their height up from the floor and by double chocking one ton cylinders;

(C) The room housing the feeders and cylinders shall be above ground surface, shall have doors which open outward and to the outside and shall be ventilated by mechanical means at floor level and shall have an air intake located higher than the exhaust ventilation;

(D) Be located so that chlorine gas, if released, will not flow into the building ventilation systems;

(E) Have corrosion resistant lighting and ventilation switches located outside the enclosure, adjacent to the door;

(F) Be provided with a platform or hydraulic scale for measuring the weight of the chlorine cylinders;

(G) Be provided with a gas mask or self contained breathing apparatus approved by the National Institute of Occupational Safety and Health (NIOSH) for protection against chlorine gas and kept in good working condition. Storage of such equipment shall be in an area adjoining the chlorine room and shall be readily available. (Also see the Oregon Occupational Health and Safety regulations contained in OAR Chapter 437.)

(j) When continuous disinfection treatment is provided through ultraviolet light disinfection, the facilities shall be designed to meet the requirements of this subsection:

(A) Ultraviolet light may be used as the sole disinfectant for non-community systems serving groundwater with minimal distribution systems, as determined by the Department;

(B) Ultraviolet systems must meet the specifications of a Class A UV system under the National Sanitation Foundation (NSF) Standard 55;

(C) The ultraviolet light failsafe dosage set point shall be equivalent to 38 mWs/cm² (38 mJ/cm²) with a wavelength between 200 and 300 nanometers;

(D) Ultraviolet lamps are insulated from direct contact with the influent water and are removable from the lamp housing;

(E) The treatment unit must have a fixed flow rate control that prevents flows exceeding the manufacturer's maximum rated flow rate, an ultraviolet light sensor that monitors light intensity through the water during operation, and a visual and audible alarm with an automatic water flow shut-off if the ultraviolet light intensity drops below the failsafe set point;

(F) There must be a visual means to verify operation of all ultraviolet lamps;

(G) The lamps, lamp sleeves, housings and other equipment must be able to withstand a working pressure of at least 100 psig (689 kPa);

(H) The treatment facility must be sheltered from the weather and accessible for routine maintenance as well as routine cleaning and replacement of the lamp sleeves and cleaning of the sensor windows/lenses;

(I) The lamps must be changed as per the manufacturer's recommendation, or at least annually; and

(J) The treatment unit must be connected into the main water line at the source with the shut-off valves at both the inlet side and the outlet side of the treatment unit. There shall be no bypass piping around the treatment unit.

(6) Finished water storage:

(a) Distribution reservoirs and treatment plant storage facilities for finished water shall be constructed to meet the following requirements:

(A) They shall be constructed of concrete, steel, wood or other durable material capable of withstanding external and internal forces which may act upon the structure;

(B) Ground-level reservoirs shall be constructed on undisturbed soil, bedrock or other stable foundation material capable of supporting the structure when full;

(C) Steel reservoirs, standpipes and elevated tanks shall be constructed in conformance with the **AWWA Standards D100 and D103**;

(D) Concrete reservoirs shall be provided with sufficient reinforcing to prevent the formation of cracks, and waterstops and dowels shall be placed at construction joints. Poured-in-place wall castings shall be provided where pipes pass through the concrete;

(E) Wooden reservoirs shall be redwood or other equally durable wood and shall be installed on a reinforced concrete base. Where redwood reservoirs are used, separate inlet and outlet pipes are required and the water entering the reservoir must be continuously disinfected so as to result in a residual in the water leaving the reservoir in accordance with paragraph (5)(c)(D) of this rule;

(F) Start-up procedures for new redwood tanks shall consist of filling the tank with a solution of water containing a minimum of 2 pounds of sodi-

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um carbonate per 1,000 gallons of water and retaining this solution in the tank a minimum of seven days before flushing;

(G) Where ground-level reservoirs are located partially below ground, the bottom shall be above the ground water table and footing drains discharging to daylight shall be provided to carry away ground water which may accumulate around the perimeter of the structure;

(H) The finished water storage capacity shall be increased to accommodate fire flows when fire hydrants are provided;

(I) Finished water storage facilities shall have watertight roofs;

(J) An access manhole shall be provided to permit entry to the interior for cleaning and maintenance. When the access manhole is on the roof of the reservoir there shall be a curbing around the opening and a lockable watertight cover that overlaps the curbing;

(K) Internal ladders of durable material, shall be provided where the only access manhole is located on the roof;

(L) Screened vents shall be provided above the highest water level to permit circulation of air above the water in finished water storage facilities;

(M) A drain shall be provided at the lowest point in the bottom, and an overflow of sufficient diameter to handle the maximum flow into the tank shall be provided at or near the top of the sidewall. The outlet ends of the drain and overflow shall be fitted with angle-flap valves and shall discharge with an airgap to a watercourse or storm drain capable of accommodating the flow;

(N) A silt stop shall be provided at the outlet pipe;

(O) Where a single inlet/outlet pipe is installed and the reservoir floats on the system, provisions shall be made to insure an adequate exchange of water and to prevent degradation of the water quality and to assure the disinfection levels required in paragraph (5)(c)(D)(i) of this rule;

(P) A fence or other method of vandal deterrence shall be provided around distribution reservoirs;

(Q) When interior surfaces of finished water storage tanks are provided with a protective coating, the coating shall meet the requirements of National Sanitation Foundation Standard 61, Section 9 — Drinking Water System Components — Health Effects (Revised September 1994) or equivalent.

(R) Reservoirs and clearwells that are to be used as disinfection contact time shall use a tracer study to determine the actual contact time. The Department must approve procedures and protocols for the tracer study prior to the initiation of the study. The Department recommends the **USEPA SWTR Guidance Manual** for tracer study procedure and protocol.

(S) Reservoirs and clearwells that are to be used for disinfection contact time shall have a means to adequately determine the flow rate on the effluent line.

(b) Pressure tanks for finished water shall meet the following requirements:

(A) Pressure tanks shall be installed above normal ground surface;

(B) Bypass piping around the pressure tank shall be provided to permit operation of the system while the tank is being maintained or repaired;

(C) Pressure tanks greater than 1,000 gallons shall be provided with an access manhole and a water sight-glass.

(D) All pressure tanks shall be provided with a drain, a pressure gauge, an air blow-off valve, means for adding air and pressure switches for controlling the operation of the pump(s);

(E) Pressure tanks shall be constructed of steel and shall be designed for pressure at least 50% greater than the maximum system pressure anticipated.

(7) Pumping facilities:

(a) Wherever possible, booster pumps shall take suction from tanks and reservoirs to avoid the potential for negative pressures on the suction line which result when the pump suction is directly connected to a distribution main;

(b) Pumps which take suction from distribution mains for the purpose of serving areas of higher elevation shall be provided with a low pressure cut-off switch on the suction side set at no less than 20 psi;

(c) Suction lift at pumping stations shall be avoided as far as possible, and pumps shall be installed so that the suction line is under a positive head. If suction lift cannot be avoided, provision shall be made for priming with water which does not exceed maximum contaminant levels;

(d) Pumping stations shall be located above maximum anticipated 100-year (1%) flood level, and the area around the pumping station shall be graded so that surface drainage is away from the station;

(e) Pumping stations shall be of durable construction so as to protect the equipment from the elements. The door to the pumping station shall be

lockable, and facilities for heating and lighting shall be provided. The floor of the pumping station shall be sloped to provide adequate drainage.

(8) Distribution systems:

(a) Wherever possible, distribution pipelines shall be located on public property. Where pipelines are required to pass through private property, easements shall be obtained from the property owner and shall be recorded with the county clerk;

(b) Pipe, pipe fittings, valves and other appurtenances utilized at Community water systems shall be manufactured, installed and tested in conformance with the latest standards of the American Water Works Association, National Sanitation Foundation or other equivalent standards acceptable to the Department;

(c) In Community water systems, distribution mains located in public roadways or easements, and the portion of the service connections from the distribution main to the customer's property line or service meter where provided are subject to the requirements of these rules. The piping from the customer's property line, or the meter where provided, to the point of water use (the building supply line) is subject to the requirements of the State Plumbing Code;

(d) In all Public Water Systems where the system facilities and the premises being served are both on the same parcel of property, requirements relating to pipe materials and pipe installation shall comply with the State Plumbing Code;

(e) Distribution piping shall be designed and installed so that the pressure measured at the property line in the case of Community water systems, or at the furthest point of water use, in the case of a Transient Non-Community water system of the type described in subsection (d) of this section, shall not be reduced below 20 psi;

(f) Distribution piping shall be carefully bedded and fully supported in material free from rocks and shall be provided with a cover of at least 30 inches. Select backfill material shall be tamped in layers around and over the pipe to support and protect it. Large rocks or boulders shall not be used as backfill over the pipe;

(g) Provision shall be made at all bends, tees, plugs, and hydrants to prevent movement of the pipe or fitting;

(h) Wherever possible, dead ends shall be minimized by looping. Where dead ends are installed, or low points exist, blow-offs of adequate size shall be provided for flushing;

(i) Air-relief valves shall be installed at high points where air can accumulate. The breather tube on air-relief valves shall be extended above ground surface and provided with a screened, downward facing elbow;

(j) Yarn, oakum, lead or other material which may impair water quality shall not be used where it will be in contact with potable water;

(k) Nonconductive water pipe (plastic or other material) that is not encased in conductive pipe or casing must have an electrically conductive wire or other approved conductor for locating the pipe when the pipeline is underground. The wire shall be No. 18 AWG (minimum) solid copper with blue colored insulation. Ends of wire shall be accessible in water meter boxes, valve boxes or casings, or outside the foundation of buildings where the pipeline enters the building. The distance between tracer lead access locations shall not be more than 1,000 feet. Joints or splices in wire shall be waterproof.

(l) Piping that is to be used for disinfection contact time shall be verified by plug flow calculations under maximum flow conditions.

(9) Crossings-Sanitary sewers and water lines:

(a) All reference to sewers in this section shall mean sanitary sewers;

(b) In situations involving a water line parallel to a sewer main or sewer lateral, the separation between the two shall be as indicated in **Figure 1**;

(c) In situations where a water line and a sewer main or sewer lateral cross, the separation between the two shall be as follows:

(A) Wherever possible, the bottom of the water line shall be 1.5 feet or more above the top of the sewer line and one full length of the water line shall be centered at the crossing;

(B) Where the water line crosses over the sewer line but with a clearance of less than 1.5 feet, the sewer line shall be exposed to the sewer line joints on both sides of the crossing to permit examination of the sewer pipe. If the sewer pipe is in good condition and there is no evidence of leakage from the sewer line, the 1.5-foot separation may be reduced. However, in this situation, the water supplier must center one length of the water line at the crossing and must prepare a written report of the findings and indicating the reasons for reducing the separation. If the water supplier determines that the conditions are not favorable or finds evidence of leakage from the sewer line, the sewer line shall be replaced with a full length of pipe centered at the crossing point, of PVC pressure pipe (ASTM D-2241, SDR

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32.5), high-density PE pipe (Drisco pipe 1000), ductile-iron Class 50 (AWWA C-51), or other acceptable pipe; or the sewer shall be encased in a reinforced concrete jacket for a distance of 10 feet on both sides of the crossing.

(C) Where the water line crosses under the sewer line, the water supplier shall expose the sewer line and examine it as indicated in paragraph (9)(c)(B) of this rule. If conditions are favorable and there is no evidence of leakage from the sewer line, the sewer line may be left in place but must be supported with a steel or reinforced concrete beam or other means of preventing settlement when it spans the water line trench, and special precautions must be taken to assure that the backfill material over the water line in the vicinity of the crossing is thoroughly tamped in order to prevent settlement which could result in the leakage of sewage. In this situation, the water supplier must center one length of the water line at the crossing and must prepare a written report recording the manner in which the sewer line was supported at the crossing and the material and methods used in backfilling and tamping to prevent settlement of the sewer. If the water supplier determines that conditions are not favorable or finds evidence of leakage from the sewer line, the provisions of paragraph (9)(c)(B) of this rule apply.

(d) When a water main is installed under a stream or other watercourse, a minimum cover of 30 inches shall be provided over the pipe. Where the watercourse is more than 15 feet wide, the pipe shall be of special construction with flexible watertight joints, valves shall be provided on both sides of the crossing so that the section can be isolated for testing or repair, and test cocks shall be provided at the valves. **Figure 1: Water Line-Sewer Line Separation;** [Figures not included. See ED. NOTE.]

(10) Disinfection of facilities:

(a) Following completion of new facilities and repairs to existing facilities, those portions of the facilities which will be in contact with the water delivered to users shall be disinfected with chlorine before they are placed into service. Other disinfectants may be used if it is demonstrated that they can also achieve the same result as chlorine;

(b) Prior to disinfection, the facilities shall be cleaned and flushed with potable water according to AWWA Standards C651 through C654;

(c) For wells, valves, pumps, water mains and service connections, disinfection by chlorination shall be accomplished according to AWWA standards C651 through C654 which includes, but is not limited to, the introduction of a chlorine solution with a free chlorine residual of 25 mg/l into the system in a manner which will result in a thorough wetting of all surfaces and the discharge of all trapped air. The solution shall remain in place for 24 hours. After the 24-hour period, the free chlorine residual shall be checked, and if it is found to be 10 mg/l or more, the chlorine solution shall be drained, the facility flushed with potable water and a minimum of one sample shall be collected from the facility for microbiological analysis. If the results of the analysis indicate that the water is free of coliform organisms, the facility may be put into service. If the check measurement taken after the 24-hour contact period indicates a free chlorine residual of less than 10 mg/l, the facilities shall be flushed, rechlorinated and rechecked until a final residual of 10 mg/l or more is achieved. Likewise, if the microbiological analysis indicates the presence of coliform organisms, the flushing and disinfection must be repeated until a sample free of coliform organisms is obtained;

(d) For reservoirs and tanks, disinfection by chlorination shall be accomplished according to AWWA Standard C652 which includes, but is not limited to, the following methods:

(A) Filling the reservoir or tank and maintaining a free chlorine residual of not less than 10 mg/l for the appropriate 6 or 24 hour retention period; or

(B) Filling the reservoir or tank with a 50 mg/l chlorine solution and leaving for 6 hours; or

(C) Directly applying by spraying or brushing a 200 mg/l solution to all surfaces of the storage facility in contact with water if the facility were full to the overflow elevation.

(e) When the procedures described in paragraphs (10)(d)(A) and (B) of this rule are followed, the reservoir or tank shall be drained after the prescribed contact period and refilled with potable water, and a sample taken for microbiological analysis. If the results of the analysis indicate that the water is free of coliform organisms, the facility may be put into service. If not, the procedure shall be repeated until a sample free of coliform organisms is obtained;

(f) When the procedure described in paragraph (10)(d)(C) of this rule is followed, the reservoir or tank shall be filled with potable water and a sample taken for microbiological analysis. It will not be necessary to flush the reservoir or tank after the chlorine solution is applied by spraying or

brushing. Microbiological analysis shall indicate that the water is free of coliform organisms before the facility can be put into service;

(g) When a reservoir is chlorinated following routine maintenance, inspection, or repair, it may be put back into service prior to receiving the report on the microbiological analysis provided the water leaving the reservoir has a free chlorine residual of at least 0.4 mg/l or a combined chlorine residual of at least 2.0 mg/l.

(h) Underwater divers used for routine maintenance, inspection, or repair of reservoirs shall use a full body dry suit with hardhat scuba and an external air supply. The diver shall be disinfected by spraying a 200 mg/l solution of chlorine on all surfaces that will come into contact with drinking water.

(i) A water line may be returned to service, following repairs or routine maintenance, prior to receiving a report on the microbiological analysis if the following procedures have been completed. The trench shall be liberally treated with hypochlorites, the interior of all pipes and fittings shall be swabbed or sprayed with a 1% hypochlorite solution, and the line shall be thoroughly flushed. Where practical, the repaired line shall be disinfected with a 100 mg/l chlorine solution for 3 hours or a 300 mg/l chlorine solution for 15 minutes then the line shall be flushed thoroughly.

[ED. NOTE: Figures and Tables referenced are available from the agency.]

[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 & 448.279

Hist.: HD 106, f. & ef. 2-6-76; HD 12-1979, f. & ef. 9-11-79; 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 333-042-0215; 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 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 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 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0058

Wellfield Determination

(1) Water systems possessing two or more wells that enter the distribution separately supplying their drinking water may be eligible to have those wells considered as a wellfield source for monitoring purposes provided the requirements of this rule are met. Information pertinent to determining whether the wellfield designation is appropriate can be found in the water system's Source Water Assessment Report.

(2) To be classified as a wellfield, the wells must meet the following criteria:

(a) The wells must be within 2,500 feet of one another or as determined in a state approved hydrogeological study to minimize inter-well interference drawdowns. For wells located in a low-impact land use area, this criterion may be waived at the discretion of the Department.

(b) The wells must produce from the same and no other aquifer. This criterion is determined using source water assessment results, based on well reports, maps and other hydrogeological information.

(3) To be considered for wellfield designation, the water supplier is asked to submit the following to the Department:

(a) A schematic drawing showing all sources, entry points and relevant sample taps;

(b) A map and description of the land use activities within the respective wellhead protection areas (using the inventory section of the Source Water Assessment Report); and

(c) A description of the pumping patterns.

(4) If a water system's wells are considered to comprise a wellfield, the susceptibility analysis conducted during the source water assessment is utilized to determine the sampling point(s). **Table 30** 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.]

Stat. Auth.: 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; PH 33-2004, f. & cert. ef. 10-21-04

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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 community water system or non-transient noncommunity water 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 and is required to develop a disinfection profile according to OAR 333-061-0030(2)(b)(C) through (E) must consult with the Department prior to making such a change. The water system must develop a disinfection profile for *Giardia lamblia* (and, if necessary, viruses), calculate a disinfection benchmark, describe the proposed change in the disinfection process, and analyze the effect(s) of the proposed change on current levels of disinfection according to the USEPA Disinfection Profiling and Benchmarking Guidance Manual and/or the USEPA LT1-ESWTR Disinfection Profiling and Benchmarking Technical Guidance Manual and submit the information to the Department for review and approval. 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.

(f) A water system subject to paragraph (1)(e) of this rule must calculate a disinfection benchmark using the following procedure:

(A) From data collected to develop the disinfection profile, determine the average *Giardia lamblia* inactivation for each calendar month by dividing the sum of all *Giardia lamblia* inactivations for that month by the number of values calculated for that month.

(B) Determine the lowest monthly average value out of the twelve values. This value becomes the disinfection benchmark.

(g) A water system that uses either chloramines, chlorine dioxide or ozone for primary disinfection must also calculate the disinfection benchmark for viruses using a method approved by the Department in addition to the disinfection profile for *Giardia lamblia*. This viral benchmark must be

calculated in the same manner as is used for the *Giardia lamblia* disinfection benchmark described in paragraph (1)(f) of this rule.

(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 31. Those plans not accompanied by a fee will not be reviewed. [Table not included. See ED. NOTE.]

(4) Plan review exemptions:

(a) Water suppliers may be exempted from submitting plans of main extensions, providing they:

(A) Have provided the Department with a current master plan; and

(B) Certify that the work will be carried out in conformance with the construction standards of these rules; and

(C) Submit to the Department an annual summary of the projects completed; and

(D) Certify that they have staff qualified to effectively supervise the projects.

(b) Those water suppliers certifying that they have staff qualified to effectively plan, design and supervise their projects, may request the Department for further exemption from this rule. Such requests must be accompanied by a listing of staff proposed to accomplish the work and a current master plan. To maintain the exemption, the foregoing must be annually updated;

(c) At the discretion of the Department, Community, Transient and Non-Transient Non-Community and State Regulated water systems may be exempted from submitting engineered plans. They shall, however, submit adequate plans indicating that the project meets the minimum construction standards of these rules.

(5) Master plans:

(a) Community water systems with 300 or more service connections shall maintain a current master plan. Master plans shall be prepared by a professional engineer registered in Oregon and submitted to the Department for review and approval.

(b) Each master plan shall evaluate the needs of the water system for at least a twenty year period and shall include but is not limited to the following elements:

(A) A summary of the overall plan that includes the water quality and service goals, identified present and future water system deficiencies, the engineer's recommended alternative for achieving the goals and correcting the deficiencies, and the recommended implementation schedule and financing program for constructing improvements.

(B) A description of the existing water system which includes the service area, source(s) of supply, status of water rights, current status of drinking water quality and compliance with regulatory standards, maps or schematics of the water system showing size and location of facilities, estimates of water use, and operation and maintenance requirements.

(C) A description of water quality and level of service goals for the water system, considering, as appropriate, existing and future regulatory requirements, nonregulatory water quality needs of water users, flow and pressure requirements, and capacity needs related to water use and fire flow needs.

(D) An estimate of the projected growth of the water system during the master plan period and the impacts on the service area boundaries, water supply source(s) and availability, and customer water use.

(E) An engineering evaluation of the ability of the existing water system facilities to meet the water quality and level of service goals, identification of any existing water system deficiencies, and deficiencies likely to develop within the master plan period. The evaluation shall include the water supply source, water treatment, storage, distribution facilities, and operation and maintenance requirements. The evaluation shall also include a description of the water rights with a determination of additional water

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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; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0064

Emergency Response Plan and Water System Operations Manual Requirements

(1) All public water systems shall maintain a current emergency response 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) All public water systems shall complete a security vulnerability assessment and develop a prioritized plan for risk reduction.

(c) As evidence of completion, all public water systems shall submit a statement to the Department certifying that the Emergency Response Plan and vulnerability assessment have been completed according to the requirements of this rule and that staff have been instructed in the use of the emergency response plan. The emergency response plan/vulnerability assessment shall be made available for review by the Department and/or the County Health Department. All Community water systems > 3,300 population are required to submit a copy of their Vulnerability Assessment and certification of completion for their Emergency Response Plan and Vulnerability Assessment to EPA as required in the federal Bioterrorism Preparedness and Response Act of 2002.

(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 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 as defined in the State Model Emergency Response Plan.

(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; PH 33-2004, f. & cert. ef. 10-21-04

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.

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(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 32 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; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0097

Adverse Health Effects Language

When providing the information on potential adverse health effects required by these rules in notices of violations of maximum contaminant levels, maximum residual disinfectant levels, treatment technique requirements, or notices of the granting or the continued existence of variances or permits, or notices of failure to comply with a variance or permit schedule, the owner or operator of a public water system shall include the language specified below for each contaminant.

(1) Adverse Health Effects for Organic Chemicals:

(a) Volatile Organic Chemicals (VOCs):

(A) Benzene. Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.

(B) Carbon tetrachloride. Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(C) Chlorobenzene. Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.

(D) o-Dichlorobenzene. Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

(E) p-Dichlorobenzene. Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.

(F) 1,2-Dichloroethane. Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

(G) 1,1-Dichloroethylene. Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(H) Cis-1,2-Dichloroethylene. Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(I) Trans-1,2-Dichloroethylene. Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.

(J) Dichloromethane(methylene chloride). Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

(K) 1,2-Dichloropropane. Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.

(L) Ethylbenzene. Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

(M) Styrene. Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(N) Tetrachloroethylene(PCE). Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.

(O) 1,2,4-trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

(P) 1,1,1-Trichloroethane. Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.

(Q) 1,1,2-Trichloroethane. Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.

(R) Trichloroethylene. Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(S) Toluene. Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.

(T) Vinyl chloride. Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.

(U) Xylenes. Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

(b) Synthetic Organic Chemicals (SOCs):

(A) 2,4-D. Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.

(B) 2,4,5-TP(Silvex). Some people who drink water containing 2,4,5-TP in excess of the MCL over many years could experience liver problems.

(C) Alachlor. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

(D) Atrazine. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

(E) Benzo(a) pyrene. Some people who drink water containing benzo(a) pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.

(F) Carbofuran. Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.

(G) Chlordane. Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.

(H) Dalapon. Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(I) Di(2-ethylhexyl) adipate. Some people who drink water containing di(2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement or possible reproductive difficulties.

(J) Di(2-ethylhexyl) phthalate. Some people who drink water containing di(2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver or experience reproductive difficulties, and may have an increased risk of getting cancer.

(K) Dibromochloropropane (DBCP). Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

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(L) Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(M) Diquat. Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

(N) Dioxin (2,3,7,8-TCDD). Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(O) Endothall. Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

(P) Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(Q) Ethylene dibromide (EDB). Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.

(R) Glyphosate. Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

(S) Heptachlor. Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(T) Heptachlor epoxide. Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(U) Hexachlorobenzene. Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys or adverse reproductive effects, and may have an increased risk of getting cancer.

(V) Hexachlorocyclopentadiene. Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.

(W) Lindane. Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

(X) Methoxychlor. Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

(Y) Oxamyl. Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

(Z) Polychlorinated biphenyls (PCBs). Some people who drink water containing polychlorinated biphenyls in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.

(AA) Pentachlorophenol. Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.

(BB) Picloram. Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.

(CC) Simazine. Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.

(DD) Toxaphene. Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.

(2) Special Notice for Lead and Copper.

(a) Mandatory health effects information. When providing the information in public notices on the potential adverse health effects of lead in drinking water, the owner or operator of the water system shall include the following specific language in the notice:

"Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure."

(b) Mandatory health effects information. When providing information on the potential adverse health effects of copper in drinking water, the owner or operator of the water system shall include the following specific language in the notice:

"Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor."

(3) Inorganics public notice language.

(a) Antimony. Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.

(b) Arsenic. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

(c) Asbestos. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.

(d) Barium. Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.

(e) Beryllium. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

(f) Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

(g) Chromium. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

(h) Cyanide. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

(i) Fluoride. Some people who drink water containing fluoride in excess of the MCL (4.0 mg/l) over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL (2.0mg/l) or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.

(j) Mercury. Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

(k) Nitrate (as nitrogen). Infants below the age of 6 months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(l) Nitrite. Infants below the age of 6 months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(m) Total Nitrate and Nitrite. Infants below the age of 6 months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(n) Selenium. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.

(o) Thallium. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

(4) Special Notice for microbiological contaminants:

(a) When providing information in public notices required under OAR 333-061-0042(2)(b)(A) for a violation of total coliform bacteria (OAR 333-061-0030(4)(a)), the owner or operator of the water system shall include the following specific language in the notice:

"Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems."

(b) When providing information in Public Notices required under OAR 333-061-0042(2)(a)(A) for a violation of fecal coliform /E. coli bacteria (OAR 333-061-0030(4)(b)), the owner or operator of the water system shall include the following specific language in the notice:

"Fecal coliforms and E. Coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems."

(c) When providing information under OAR 333-061-0042(2)(b)(A) and 333-061-0030(4)(a) for a violation of total coliform bacteria maximum contaminant level, where the violation has been shown to result from persistent coliform growth in the distribution system, the owner or operator may include the following specific language in the notice with approval

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from the Department. This language may be used in addition to, but not in place of, the mandatory language contained in OAR 333-061-0097(4)(a):

"In this case, coliforms are present on inside surfaces of water mains and piping even in the presence of a disinfectant and even though proper water treatment and water system operation has taken place. This presence of coliforms presents no hazard to the health of water users, but does interfere with the water system's sampling program. Correction of the problem is difficult and may involve temporary treatment changes that may cause noticeable changes in the water's taste, odor, or appearance. These corrective actions will be carried out after the water system submits a plan which is approved by the Department of Human Services."

(d) Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include, bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.

(5) Treatment Techniques — Public Notice Language:

(a) Acrylamide. Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

(b) Epichlorohydrin. Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

(c) Surface Water Treatment Rule (Giardia, viruses, heterotrophic plate count bacteria, Legionella), Interim Enhanced Surface Water Treatment Rule (Giardia, viruses, heterotrophic plate count bacteria, Legionella and Cryptosporidium), Long Term 1 Enhanced Surface Water Treatment Rule (Giardia, viruses, heterotrophic plate count bacteria, Legionella and Cryptosporidium) and Filter Backwash Recycling Rule (Cryptosporidium). Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(6) Disinfectant and Disinfection Byproducts — Special Adverse Health Effects Language.

(a) Total Trihalomethanes (TTHMs). Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.

(b) Haloacetic Acids (HAA). Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.

(c) Chlorine. Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.

(d) Chloramines. Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.

(e) Chlorine dioxide. (where any 2 consecutive daily samples taken at the entrance to the distribution system are above the MRDL). Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.

Note: In addition to the language in this introductory text of subsection (6)(e) of this rule, water systems must include either the language in paragraphs (6)(e)(A) or (6)(e)(B) of this rule. Water systems with a violation at the treatment plant, but not in the distribution system, are required to use the language in paragraph (6)(e)(A) of this rule and treat the violation as a non-acute violation. Water systems with a violation in the distribution system are required to use the language in paragraph (6)(e)(B) of this rule and treat the violation as an acute violation.

(A) The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, and do not include violations within the distribution system serving users of this water supply. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to present consumers.

(B) The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system serving water users. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects of excessive exposure to chlorine dioxide-treated water. The purpose of this notice is to advise that such persons should consider reducing their risk of adverse effects from these chlorine dioxide violations by seeking alternate sources of water for human consumption until such exceedances are rectified. Local and State health authorities are the best sources for information concerning alternate drinking water.

(d) Bromate. Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.

(e) Chlorite. Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.

(f) Total Organic Carbon (TOC). Total Organic Carbon (TOC) has no health effects. However, TOC provides a medium for the formation of disinfection byproducts (DBPs). These byproducts include trihalomethanes and haloacetic acids. Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.

(7) Adverse health effects for radionuclides:

(a) Beta/photon emitters. Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(b) Alpha emitters. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(c) Combined Radium-226/228. Some people who drink water containing radium-226 or -228 in excess of the MCL over many years may have an increased risk of getting cancer.

(d) Uranium. Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.273 & 448.279

Hist.: HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 9-1991(Temp), f. & cert. ef. 6-24-91; HD 1-1992, f. & cert. ef. 3-5-92; 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 11-1994, f. & cert. ef. 4-11-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; 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 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0205

Purpose

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. The objectives of the program are:

(1) To promote the safe and proper operation of water supply systems for protection of the public health.

(2) 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.

(3) To advise and assist applicants for certification, set forth conditions of reciprocity, and provide for examinations of applicants.

(4) To award certificates and maintain a register of current certificate holders by classification and level.

(5) 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.

(6) 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; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0210

Scope

These rules apply to community and non-transient noncommunity 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; PH 33-2004, f. & cert. ef. 10-21-04

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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.

(2) "Certificate" means a certificate of competency issued by the Department stating that the operator meets the requirements for a specific operator classification and level.

(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 that includes experience in and knowledge of the operational decision making of a Conventional Filtration Treatment Plant.

(8) "On Call" means available to respond immediately by radio or telephone.

(9) "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.

(10) "Post High School Education" means, that education acquired through programs such as short schools, bona fide correspondence courses, trade schools, colleges, 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.

(11) "Small Water System" means a community or non-transient non-community water system serving fewer than 150 connections and either uses groundwater as its only source or purchases its water from another public water system without adding any additional treatment.

(12) "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 nontransient 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; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0220

Classification of Water Systems

Water systems are classified as small water, water distribution, and water treatment based on size and complexity, as determined by the Department. The classification of these systems and treatment plants is as follows:

(1) A water system is classified as a Small Water System if it has fewer than 150 connections and either uses only groundwater as its source or purchases its water from a community or non-transient non-community public water system without adding any additional treatment.

(2) Water distribution classification is based on the population served, as follows: Classification, – Population Served, Water Distribution 1 – 1,500, Water Distribution 2 – 1,501 – 15,000, Water Distribution 3 – 15,001 – 50,000, Water Distribution 4 – >50,000.

(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): [Table not included. See ED. NOTE.]

(d) Systems using a Conventional Filtration Treatment Plant to treat surface water or groundwater under the influence of surface water are classified as Water Filtration and shall have an operator who has a valid Water Treatment 2 or higher certification and a Filtration Endorsement.

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

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0225

General Requirements Applying to Water Systems

(1) Every water supplier must at all times 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 processes and operational decisions that affect public health are made.

(2) The operator(s) described in section (1) above, must be certified at a level equal to or greater than the classification of that water system.

(3) Water systems are classified according to the size and complexity of the water system or water treatment plants to determine the classification type and level required for the operator.

(4) The owner of a water system subject to these rules must 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 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. For operators certified at less than the Department-required level for treatment and/or distribution, 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 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 16-2001(Temp), f. 7-31-01, cert. ef. 8-1-01 thru 1-28-02; Administrative correction 3-14-02; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0228

Certification Requirements For Small Water System Operators

(1) An applicant for initial certification as an operator of a small water 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 water system operation and water treatment processes, or

(b) Passing a Department approved written examination covering basic small water system operation and water treatment.

(2) A small water system operator certificate expires on July 31 of every third year. A certificate will 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 and submittal of the designated application form. When renewed, the new certificate will be valid for three years from the expiration date of the prior certificate.

(3) An operator whose certificate has expired cannot be in responsible charge of any small water system.

(4) Small water system operators are exempt from fees.

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; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0230

Contracting For Services

(1) Water systems may contract with a certified operator or a water system having certified operators to provide supervision. The contract oper-

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ator must be certified at the level equal to or greater than the classification of the water system.

(2) The supervision required in section (1) of this rule must be sufficient that the contracted certified operator will:

(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 must 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 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; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0235

Operator Requirements Levels 1-4

Certificates are awarded at four (4) levels in each classification, water treatment (WT) or water distribution (WD), and subject to requirements as follows:

(1) Water Treatment or Distribution Level 1 Operator Certification qualifications:

(a) Education: High School Diploma 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 Level 1 written examination.

(2) Water Treatment or Distribution Level 2 Operator Certification qualifications:

(a) Education: High School Diploma 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 Level 2 or the Level 2 multiple-entry written examination.

(3) Water Treatment or Distribution Level 3 Operator Certification qualifications:

(a) Education: High school Diploma 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 Level 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 Level 3 or the Level 3 multiple-entry written examination.

(4) Water Treatment or Distribution Level 4 Operator Certification qualifications:

(a) Must be certified at Level 3; 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 Level 4 only, 10 years of experience, of which 3 years must have been involved in operational decision making; and

(c) Successful completion of the Water Treatment or Distribution Level 4 written examination.

(5) Filtration Endorsement qualifications:

(a) Must be certified at Water Treatment Level 2 or higher; and

(b) Must have one year experience in the operational decision making at a Conventional Filtration Treatment Plant; and

(c) Must successfully pass 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 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; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0245

Applications For Certification Levels 1-4

(1) Certification will be granted to applicants on the following basis:

(a) The information submitted on the application form;

(b) An evaluation of the applicant's qualifications to take the exam by the Department; and

(c) Successfully passing an examination approved and conducted by the Department.

(2) Certification by reciprocity is based on current, valid certification in another state or province which has a recognized certification program. Certification may be granted at the level where the examination, experience, and education requirements are equivalent to those outlined in these Rules.

(3) Each applicant for certification must meet the minimum requirements of experience and education as listed under 333-061-0235 "Operator Requirements Levels 1-4" in order to be eligible for admission to the written examination.

(4) Applicants denied admission to the certification examination or denied certification by reciprocity have the right to appeal such a decision to the Department.

(5) Transcripts or proof of satisfactory completion of all education and documentation of experience claimed must be submitted with the application.

(6) Experience and education qualifications are based on the following:

(a) One year of experience is equivalent to 12 months full-time with 100% of time spent on activities directly relating to the certificate type for which application is made.

(b) The Department may give substitute credit not to exceed one-half of the experience requirements for the level desired as related experience in any of the following areas:

(A) When applying for a Water Distribution Certificate:

(i) Wastewater Collection;

(ii) Water Treatment Plant;

(iii) Cross Connection Control.

(B) When applying for a Water Treatment Certificate:

(i) Wastewater Treatment Plant;

(ii) Wastewater Treatment Laboratory;

(iii) Water Distribution System;

(iv) Industrial/commercial process water treatment.

(c) Post High School Education must be directly related to the field of water treatment/water distribution and either acceptable as college transfer or valid Continuing Education Units (CEUs).

(A) Each year of college education completed, (one year of college education is 30 semester hours or 45 quarter hours, or the equivalent) in the fields of engineering, chemistry, water/wastewater technology, or allied sciences.

(B) Forty-Five (45) valid CEUs is equivalent to one year of post high school education.

(C) Any combination of 45 college credits and CEUs can be used to total one year of post high school education.

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; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0250

Examinations Levels 1-4

(1) Examinations will 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 day 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

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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) An applicant must document all claims of education and experience.

(4) The applicant must obtain a minimum score of 70% in order to pass the examination.

(5) If an applicant needs to take an examination at a time other than those mentioned above, the applicant will 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.

(6) 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 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; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0260

Certificate Renewal Levels 1-4

(1) All certificates expire on December 31 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 every two years as described below:

(a) 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:

(A) 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.

(B) 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.

(C) 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.

(b) Two college credits in the fields of engineering, chemistry, water/wastewater technology, or allied sciences will meet continuing education requirements.

(c) CEUs from other states having standards equal to or greater than these rules may be accepted by the Department.

(d) Maintaining CEU records is the responsibility of the operator.

(2) An operator who fails to renew the certificate pursuant to the provisions of this section by the expiration date cannot be in direct responsible charge of a water system. The suspension may be lifted by the payment of the late fee, documentation of CEUs (when required), and the renewal fee, if made by March 31 following the date of expiration. An operator who has failed to renew the certificate by March 31 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, the requirements established for new applicants must be met 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 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; PH 33-2004, f. & cert. ef. 10-21-04

333-061-0265

Fees

(1) All fees are to 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 33. [Table not included. See ED. NOTE.]

(4) Operators having more than one certification pertaining to water systems (water treatment and water distribution) may receive a combination certification. The fee is the 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 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 19-1989(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; PH 33-2004, f. & cert. ef. 10-21-04

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 obtained the certificate by fraud or deceit.

(b) The applicant 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 Department rule.

(d) The applicant/operator fails to comply with any Department investigation.

(2) Any applicant whose application or certificate has been denied or revoked has the right to appeal pursuant to ORS Chapter 183.

(3) No person whose certificate has been revoked under this rule is eligible to apply for certification for one year from the effective date of the final order of revocation. Any such person who applies for certification must 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 19-1989(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; PH 33-2004, f. & cert. ef. 10-21-04

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.

(4) Civil penalties shall be based on the population served by the public water system 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 448

Stats. Implemented: ORS 448.280, 448.285, 448.290 & 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; 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; PH 33-2004, f. & cert. ef. 10-21-04

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Subject: Defines cross connection- and backflow prevention-related requirements, operations, and assembly equipment consistent with currently recognized technical standards and the Oregon Specialty Plumbing Code. Defines cross connection program implementation standards for water suppliers and community water systems. Identifies premises requiring high hazard containment isolation and assemblies used for backflow protection in premises isolation. Updates Backflow Assembly Tester Certification, Cross Connection Specialist Certification, and Cross Connection Instructor and Training requirements. Establishes an advisory board to the Department for cross connection control issues.

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) "Approval" or "Approved" means approved in writing.

(5) "Approved Air Gap (AG)" means a physical separation between the free-flowing discharge end of a potable water supply pipeline and an open or non-pressurized receiving vessel. An "Approved Air Gap" shall be at least twice the diameter of the supply pipe measured vertically above the overflow rim of the vessel and in no case less than 1 inch (2.54 cm), and in accord with Oregon Plumbing Specialty Code.

(6) "Approved Backflow Prevention Assembly" means a Reduced Pressure Principle Backflow Prevention Assembly, Reduced Pressure Principle-Detector Backflow Prevention Assembly, Double Check Valve Backflow Prevention Assembly, Double Check-Detector Backflow Prevention Assembly, Pressure Vacuum Breaker Backsiphonage Prevention Assembly, or Spill-Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly, of a make, model, orientation, and size approved by the Department. Assemblies listed in the currently approved backflow prevention assemblies list developed by the University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research, or other testing laboratories using equivalent testing methods, are considered approved by the Department.

(7) "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.

(8) "Aquifer Parameter" means a characteristic of an aquifer, such as thickness, porosity or hydraulic conductivity.

(9) "Aquifer Test" means pumping a well in a manner that will provide information regarding the hydraulic characteristics of the aquifer.

(10) "Atmospheric Vacuum Breaker (AVB)" means a device consisting of an air inlet valve or float check, a check seat and an air inlet port(s). This device is designed to protect against a non-health hazard or a health hazard under a backsiphonage condition only.

(11) "Auxiliary Water Supply" means any supply of water used to augment the supply obtained from the public water system, which serves the premise in question.

(12) "Average Groundwater Velocity" means the average velocity at which groundwater moves through the aquifer as a function of hydraulic gradient, hydraulic conductivity and porosity.

(13) "AWWA" means the American Water Works Association.

(14) "Backflow" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any sources other than its intended source, and is caused by backsiphonage or backpressure.

(15) "Backflow Preventer" means a device, assembly or method to prevent backflow into the potable water system.

(16) "Backflow Prevention Assembly" means a backflow prevention assembly such as a Pressure Vacuum Breaker Backsiphonage Prevention

Assembly, Spill-Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly, Double Check Valve Backflow Prevention Assembly, Double Check-Detector Backflow Prevention Assembly, Reduced Pressure Principle Backflow Prevention Assembly, or Reduced Pressure Principle-Detector Backflow Prevention Assembly and the attached shutoff valves on the inlet and outlet ends of the assembly, assembled as a complete unit.

(17) "Backpressure" means an elevation of pressure downstream of the distribution system that would cause, or tend to cause, water to flow opposite of its intended direction.

(18) "Backsiphonage" means a drop in distribution system pressure below atmospheric pressure (partial vacuum), that would cause, or tend to cause, water to flow opposite of its intended direction.

(19) "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).

(20) "Bottled Water" means potable water from a source approved by the Department for domestic use which is placed in small, easily transportable containers.

(21) "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.

(22) "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.

(23) "Check Valve" means a valve, which allows flow in only one direction.

(24) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into floc.

(25) "Coliform-Positive" means the presence of coliform bacteria in a water sample.

(26) "Community Water System" means a public water system that has 15 or more service connections used by year-round residents, or that regularly serves 25 or more year-round residents.

(27) "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.

(28) "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.

(29) "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.

(30) "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.

(31) "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.

(32) "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.

(33) "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.

(34) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water that creates a health hazard.

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(35) "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.

(36) "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.

(37) "Cross Connection" means any actual or potential unprotected connection or structural arrangement between the public or user's potable water system and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas, or substances other than the intended potable water with which the system is supplied. Bypass arrangements, jumper connections, removable sections, swivel, or change-over devices, and other temporary or permanent devices through which, or because of which, backflow can occur are considered to be cross connections.

(38) "CT" means the product of the residual disinfectant concentration "C" (measured in mg/l) and disinfectant contact time(s), "T" (measured in minutes).

(39) "Degree of Hazard" means either pollution (non-health hazard) or contamination (health hazard) and is determined by an evaluation of hazardous conditions within a system.

(40) "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.

(41) "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.

(42) "Discharge" means the volume rate of loss of groundwater from the aquifer through wells, springs or to surface water.

(43) "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.

(44) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(45) "Disinfection profile" means a summary of *Giardia lamblia* inactivation through the treatment plant.

(46) "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.

(47) "Department" means the Oregon Department of Human Services.

(48) "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.

(49) "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).

(50) "Double Check-Detector Backflow Prevention Assembly (DCDA)" means a specially designed assembly composed of a line size approved double check valve assembly assembled with a bypass containing a specific water meter and an approved double check valve assembly. The meter shall register accurately for only very low rates of flow up to three gallons per minute and shall show a registration for all rates of flow. This assembly is designed to protect against a non-health hazard.

(51) "Double Check Valve Backflow Prevention Assembly (DC)" means an assembly of two independently acting approved check valves, including tightly closing resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient seated test cocks. This assembly is designed to protect against a non-health hazard.

(52) "Drawdown" means the difference, measured vertically, between the static water level in the well and the water level during pumping.

(53) "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.

(54) "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.

(55) "Drinking Water Protection Plan" means a plan, certified by the Department of Environmental Quality according to OAR 340-040-0160 to 340-040-0180, which identifies the actions to be taken at the local level to protect a specifically defined and certified surface water and/or groundwater drinking water protection area. The plan is developed by the local Responsible Management Authority and/or team and includes a written description of each element, public participation efforts, and an implementation schedule.

(56) "Effective Corrosion Inhibitor Residual" means a concentration sufficient to form a passivating film on the interior walls of a pipe.

(57) "Effective Porosity" means the ratio of the volume of interconnected voids (openings) in a geological formation to the overall volume of the material.

(58) "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.

(59) "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.

(60) "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.

(61) "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

(62) "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

(63) "EPA" means the United States Environmental Protection Agency.

(64) "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.

(65) "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.

(66) "First Customer" means the initial service connection or tap on a public water supply after any treatment processes.

(67) "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.

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(68) "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.

(69) "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.

(70) "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.

(71) "Gross Alpha Particle Activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(72) "Gross Beta Particle Activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(73) "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.

(74) "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.

(75) "Hauled Water" means water for human consumption transported from a Public Water System in a manner approved by the Department.

(76) "Health Hazard (Contamination)" means an impairment of the quality of the water that could create an actual hazard to the public health through poisoning or through the spread of disease by sewage, industrial fluids, waste, or other substances.

(77) "Human Consumption" means water used for drinking, personal hygiene bathing, showering, cooking, dishwashing and maintaining oral hygiene.

(78) "Hydraulic Conductivity" means the capacity of the medium, e.g., soil, aquifer, or any hydrogeological unit of interest, to transmit water.

(79) "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.

(80) "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.

(81) "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.

(82) "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.

(83) "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.

(84) "Hydrogeologic Unit" means a geologic formation, group of formations, or part of a formation that has consistent and definable hydraulic properties.

(85) "Impermeable Material" means a material that limits the passage of water.

(86) "Impounding Reservoir" means an uncovered body of water formed behind a dam across a river or stream, and in which water is stored.

(87) "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.

(88) "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)(v), 333-061-0036(3)(a)(J) and (3)(c)(N).

(89) "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.

(90) "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.

(91) "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.

(92) "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.

(93) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(94) "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.

(95) "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.

(96) "Master Plan" means an overall plan, which shows the projected development of a distribution system and alternatives for source development.

(97) "Maximum Contaminant Level (MCL)" means the maximum allowable level of a contaminant in water delivered to the user's 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.

(98) "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.

(99) "Multi-purpose Piping System" means a piping system within residential dwellings intended to serve both domestic and fire protection needs. This type of system is considered part of a potable water system.

(100) "New Groundwater Sources" means additional or modified wells and/or springs owned by the Public Water System.

(101) "Non-Health Hazard (Pollution)" means an impairment of the quality of the water to a degree that does not create a hazard to the public health, but does adversely affect the aesthetic qualities of such water for potable use.

(102) "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.

(103) "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.

(104) "Optimal Corrosion Control Treatment" means the corrosion control treatment that minimizes the lead and copper concentrations at user's taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

(105) "Pathogenic" means a specific agent (bacterium, virus or parasite) causing or capable of causing disease.

(106) "Peak Daily Demand" means the maximum rate of water use, expressed in gallons per day, over the 24-hour period of heaviest consumption.

(107) "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.

(108) "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.

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(109) "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(110) "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.

(111) "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.

(112) "Point of Delivery (POD)" means the point of connection between a public water system and the user's water system. Beyond the point of delivery, the Oregon Plumbing Specialty Code applies. See "Service Connection".

(113) "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.

(114) "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.

(115) "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.

(116) "Pollutant" means a substance that creates an impairment of the quality of the water to a degree which does not create a hazard to the public health, but which does adversely affect the aesthetic qualities of the water.

(117) "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.

(118) "Potable Water". See Safe Drinking Water.

(119) "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.

(120) "Potential Cross Connection" means a cross connection that would most likely occur, but may not be taking place at the time of an inspection.

(121) "Potentiometric Surface" means a surface that denotes the variation of hydraulic head in the given aquifer across an area.

(122) "Premise" means real estate and the structures on it.

(123) "Premise Isolation" means the practice of protecting the public water supply from contamination or pollution by installing backflow prevention assemblies at, or near, the point of delivery where the water supply enters the premise. Premise isolation does not guarantee protection to persons on the premise.

(124) "Pressure Vacuum Breaker Backsiphonage Prevention Assembly (PVB)" 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. This assembly is to be equipped with properly located resilient seated test cocks and tightly closing resilient seated shutoff valves attached at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard under backsiphonage conditions only.

(125) "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.

(126) "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.

(127) "Public Water System" means a system for the provision to the public of piped water for human consumption, if such system has more than three service connections, or supplies water to a public or commercial establishment that operates a total of at least 60 days per year, and that is used by 10 or more individuals per day, or is a facility licensed by the Department. 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".

(128) "Purchasing Water System" means a public water system which obtains its water in whole or in part from another public water system.

(129) "Recharge" means the process by which water is added to a zone of saturation, usually by downward infiltration from the surface.

(130) "Recharge Area" means a land area in which water percolates to the zone of saturation through infiltration from the surface.

(131) "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.

(132) "Reduced Pressure Principle Backflow Prevention Assembly (RP)" means an assembly containing two independently acting approved check valves, together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and at the same time below the first check valve. The unit shall include properly located resilient seated test cocks and tightly closing resilient seated shutoff valves at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard.

(133) "Reduced Pressure Principle-Detector Backflow Prevention Assembly (RPDA)" means a specifically designed assembly composed of a line size approved reduced pressure principle backflow prevention assembly with a bypass containing a specific water meter and an approved reduced pressure principle backflow prevention assembly. The meter shall register accurately for only very low rates of flow up to three gallons per minute and shall show a registration for all rates of flow. This assembly is designed to protect against a non-health hazard or a health hazard.

(134) "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.

(135) "Repeat Compliance Period" means any subsequent compliance period after the initial compliance period.

(136) "Residual disinfectant concentration" means the concentration of disinfectant measured in mg/l in a representative sample of water.

(137) "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.

(138) "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.

(139) "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.

(140) "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.

(141) "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.

(142) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(143) "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.

(144) "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 premise. For a community water system, the portion of the service connection that 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.

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(145) "Single Connection System" means a public water system serving only one installation, such as a restaurant, campground or place of employment.

(146) "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.

(147) "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.

(148) "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).

(149) "Spill Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly (SVB)" means an assembly containing an independently operating, internally loaded check valve and independently operating loaded air inlet valve located on the discharge side of the check valve. The assembly is to be equipped with a properly located resilient seated test cock, a properly located bleed/vent valve, and tightly closing resilient seated shutoff valves attached at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard under a backsiphonage condition only.

(150) "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.

(151) "Stand-alone Fire Suppression System" means a piping system within a premise intended to only serve as a fire protection system separated from the potable water system.

(152) "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.

(153) "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.

(154) "Surface Water" means all water, which is open to the atmosphere and subject to surface runoff.

(155) "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.

(156) "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.

(157) "Thermal Expansion" means the pressure increase due to a rise in water temperature that occurs in water piping systems when such systems become "closed" by the installation of a backflow prevention assembly or other means, and will not allow for expansion beyond that point of installation.

(158) "These Rules" means the Oregon Administrative Rules encompassed by OAR 333-061-0005 through 333-061-0098.

(159) "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.

(160) "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.

(161) "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.

(162) "Transient Non-Community Water System" means a public water system that serves a transient population of 25 or more persons.

(163) "Turbidity" means a measure of the cloudiness of water caused by suspended particles. The units of measure for turbidity are nephelometric turbidity units (NTU).

(164) "Unconfined Well" means a well completed in an unconfined aquifer. More specifically, a well, which produces water from a formation that is not overlying by impermeable material. This well shall be con-

structed according to OAR Chapter 690 "Well Construction and Maintenance" standards, June 1989.

(165) "University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research (USC FCCCHR)" is an agency that conducts laboratory and field tests to evaluate and grant "Certificates of Approval" to backflow prevention assemblies meeting approved standards.

(166) "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.

(167) "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.

(168) "Virus" means a virus of fecal origin, which is infectious to humans by waterborne transmission.

(169) "Waiver" means official permission from the Department for a public water system to deviate from the construction standards set forth in these rules.

(170) "Water-bearing Zone" means that part or parts of the aquifer encountered during drilling that yield(s) water to a well.

(171) "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.

(172) "Water Supplier" means a person, group of persons, municipality, district, corporation or other entity, which owns or operates a public potable water system.

(173) "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.

(174) "Water System" means a system for the provision of piped water for human consumption.

(175) "Water System Operations Manual" means a written document describing the actions and procedures necessary to operate and maintain the entire water system.

(176) "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.

(177) "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.

(178) "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.

(179) "Wellhead Protection" means drinking water protection applied to a groundwater-supplied Public Water System.

(180) "Wellhead Protection Area (WHPA)" means a drinking water protection area for a groundwater-supplied drinking water source.

(181) "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; PH 33-2004, f. & cert. ef. 10-21-04; PH 34-2004, f. & cert. ef. 11-2-04

333-061-0070

Cross Connection Control Requirements

(1) Water suppliers shall undertake cross connection control programs to protect the public water systems from pollution and contamination.

(2) The water supplier's responsibility for cross connection control shall begin at the water supply source, include all public treatment, storage,

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and distribution facilities under the water supplier's control, and end at the point of delivery to the water user's system.

(3) Water suppliers shall develop and implement cross connection control programs that meet the minimum requirements set forth in these rules.

(4) Water suppliers shall develop a procedure to coordinate cross connection control requirements with the appropriate local administrative authority having jurisdiction.

(5) The water supplier shall ensure that inspections of approved air gaps and/or inspections and tests of approved backflow prevention assemblies protecting the public water system are conducted:

(a) At the time of installation, any repair or relocation;

(b) At least annually;

(c) More frequently than annually for approved backflow prevention assemblies that repeatedly fail, or are protecting health hazard cross connections, as determined by the water supplier;

(d) After a backflow incident; or

(e) After an approved air gap is re-plumbed.

(6) Approved air gaps or approved backflow prevention assemblies found not to be functioning properly shall be repaired, replaced or re-plumbed by the water user or premise owner, as defined in the water supplier's local ordinance or enabling authority, or the water supplier may take action in accordance with subsection 9(a) of these rules.

(7) A water user or premise owner who obtains water from a water supplier must notify the water supplier if they add any chemical or substance to the water.

(8) Premise isolation requirements:

(a) For service connections to premises listed or defined in **Table 1** (Premises Requiring Isolation), the water supplier shall ensure an approved backflow prevention assembly or an approved air gap is installed;

(A) Premises with cross connections not listed or defined in **Table 1** (Premises Requiring Isolation), shall be individually evaluated. The water supplier shall require the installation of an approved backflow prevention assembly or an approved air gap commensurate with the degree of hazard on the premise, as defined in Table 2 (Backflow Prevention Methods);

(B) In lieu of premise isolation, the water supplier may accept an in-premise approved backflow prevention assembly as protection for the public water system when the approved backflow prevention assembly is installed, maintained and tested in accordance with the Oregon Plumbing Specialty Code and these rules.

(b) Where premise isolation is used to protect against a cross connection, the following requirements apply;

(A) The water supplier shall:

(i) Ensure the approved backflow prevention assembly is installed at a location adjacent to the service connection or point of delivery;

(ii) Ensure any alternate location used must be with the approval of the water supplier and must meet the water supplier's cross connection control requirements; and

(iii) Notify the premise owner and/or water user, in writing, of thermal expansion concerns.

(B) The premise owner shall:

(i) Ensure no cross connections exist between the point of delivery from the public water system and the approved backflow prevention assemblies, when these are installed in an alternate location; and

(ii) Assume responsibility for testing, maintenance, and repair of the installed approved backflow prevention assembly to protect against the hazard.

(c) Where unique conditions exist, but not limited to, extreme terrain or pipe elevation changes, or structures greater than three stories in height, even with no actual or potential health hazard, an approved backflow prevention assembly may be installed at the point of delivery; and

(d) Where the water supplier chooses to use premise isolation by the installation of an approved backflow prevention assembly on a one- or two-family dwelling covered by the Oregon Plumbing Specialty Code and there is no actual or potential cross connection, the water supplier shall:

(A) Install the approved backflow prevention assembly at the point of delivery;

(B) Notify the water user in writing of thermal expansion concerns; and

(C) Take responsibility for testing, maintenance and repair of the installed approved backflow prevention assembly.

(9) In community water systems, water suppliers shall implement a cross connection control program directly, or by written agreement with another agency experienced in cross connection control. The local cross connection program shall consist of the following elements:

(a) Local ordinance or enabling authority that authorizes discontinuing water service to premises for:

(A) Failure to remove or eliminate an existing unprotected or potential cross connection;

(B) Failure to install a required approved backflow prevention assembly;

(C) Failure to maintain an approved backflow prevention assembly; or

(D) Failure to conduct the required testing of an approved backflow prevention assembly.

(b) A written program plan for community water systems with 300 or more service connections shall include the following:

(A) A list of premises where health hazard cross connections exist, including, but not limited to, those listed in Table 1 (Premises Requiring Isolation);

(B) A current list of certified cross connection control staff members;

(C) Procedures for evaluating the degree of hazard posed by a water user's premise;

(D) A procedure for notifying the water user if a non-health hazard or health hazard is identified, and for informing the water user of any corrective action required;

(E) The type of protection required to prevent backflow into the public water supply, commensurate with the degree of hazard that exists on the water user's premise, as defined in Table 2 (Backflow Prevention Methods);

(F) A description of what corrective actions will be taken if a water user fails to comply with the water supplier's cross connection control requirements;

(G) Current records of approved backflow prevention assemblies installed, inspections completed, backflow prevention assembly test results on backflow prevention assemblies and verification of current Backflow Assembly Tester certification; and

(H) A public education program about cross connection control.

(c) The water supplier shall prepare and submit a cross connection control Annual Summary Report to the Department, on forms provided by the Department, before the last working day of March each year.

(d) In community water systems having 300 or more service connections, water suppliers shall ensure at least one person is certified as a Cross Connection Control Specialist, unless specifically exempted from this requirement by the Department.

(10) In transient or non-transient non-community water systems, the water supplier that owns and/or operates the system shall:

(a) Ensure no cross connections exist, or are isolated from the potable water system with an approved backflow prevention assembly, as required in section (11) of these rules;

(b) Ensure approved backflow prevention assemblies are installed at, or near, the cross connection; and

(c) Conduct a cross connection survey and/or inspection to ensure compliance with these rules. All building permits and related inspections are to be made by the Department of Consumer and Business Services, Building Codes Division, as required by ORS 447.020.

(11) Approved backflow prevention assemblies required under these rules shall be assemblies approved by the University of Southern California, Foundation for Cross Connection Control and Hydraulic Research, or other equivalent testing laboratories approved by the Department.

(12) Backflow prevention assemblies installed before the effective date of these rules that were approved at the time of installation, but are not currently approved, shall be permitted to remain in service provided the assemblies are not moved, the piping systems are not significantly remodeled or modified, the assemblies are properly maintained, and they are commensurate with the degree of hazard they were installed to protect. The assemblies must be tested at least annually and perform satisfactorily to the testing procedures set forth in these rules.

(13) Tests performed by Department-certified Backflow Assembly Testers shall be in conformance with procedures established by the **University of Southern California, Foundation for Cross Connection Control and Hydraulic Research, Manual of Cross Connection Control, 9th Edition, December 1993**, or other equivalent testing procedures approved by the Department.

(14) Backflow prevention assemblies shall be tested by Department-certified Backflow Assembly Testers. The Backflow Assembly Tester shall provide a copy of each completed test report to the water user or premise owner, and the water supplier:

(a) Within 10 working days; and

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(b) The test reports will be in a manner and form acceptable to the water supplier.

(15) All approved backflow prevention assemblies subject to these rules shall be installed in accordance with OAR 333-061-0071 and the **Oregon Plumbing Specialty Code**.

(16) The Department shall establish an advisory board for cross connection control issues consisting of not more than nine members, and including representation from the following:

- (a) Oregon-licensed Plumbers;
- (b) Department-certified Backflow Assembly Testers;
- (c) Department-certified Cross Connection Specialists;
- (d) Water Suppliers;
- (e) The general public;
- (f) Department-certified Instructors of Backflow Assembly Testers or Cross Connection Specialists;
- (g) Backflow assembly manufacturers or authorized representatives;
- (h) Engineers experienced in water systems, cross connection control and/or backflow prevention; and

(i) Oregon-certified Plumbing Inspectors.

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

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

Stat. Auth.: ORS 431 & ORS 448

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.268 & 448.273

Hist.: HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; HD 2-1983, f. & ef. 2-23-83; HD 20-1983, f. 10-20-83, ef. 11-1-83; HD 30-1985, f. & ef. 12-4-85; HD 3-1987, f. & ef. 2-17-87; 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 1-1994, f. & cert. ef. 1-7-94; HD 1-1996, f. 1-2-96, cert. ef. 1-2-96; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; PH 34-2004, f. & cert. ef. 11-2-04

333-061-0071

Backflow Assembly Installation and Operation Standards

(1) Any approved backflow prevention assembly required by OAR 333-061-0070 shall be installed in a manner that:

(a) Facilitates its proper operation, maintenance, inspection, and/or in-line testing using standard installation procedures approved by the Department, such as, but not limited to, University of Southern California, Manual of Cross-Connection Control, 9th Edition, or the Pacific Northwest Section American Water Works Association, Cross Connection Control Manual, 6th Edition;

(b) Precludes the possibility of continuous submersion of an approved backflow prevention assembly, and precludes the possibility of any submersion of the relief valve on a reduced pressure principle backflow prevention assembly; and

(c) Maintains compliance with all applicable safety regulations and the Oregon Plumbing Specialty Code.

(2) For premise isolation installation:

(a) The approved backflow prevention assembly shall be installed at a location adjacent to the service connection or point of delivery; or

(b) Any alternate location must be with the advance approval of the water supplier and must meet the water supplier's cross connection control requirements; and

(c) The premise owner shall ensure no cross connections exist between the point of delivery from the public water system and the approved backflow prevention assembly.

(3) Bypass piping installed around any approved backflow prevention assembly must be equipped with an approved backflow prevention assembly to:

(a) Afford at least the same level of protection as the approved backflow prevention assembly being bypassed; and

(b) Comply with all requirements of these rules.

(4) All Oregon Plumbing Specialty Code approved residential multi-purpose fire suppression systems constructed of potable water piping and materials do not require a backflow prevention assembly.

(5) Stand-alone fire suppression systems shall be protected commensurate with the degree of hazard, as defined in Table 2 (Backflow Prevention Methods).

(6) Stand-alone irrigation systems shall be protected commensurate with the degree of hazard, as defined in Table 2 (Backflow Prevention Methods).

(7) An Atmospheric Vacuum Breaker (AVB) shall: [AVB installation figure not included. See ED. NOTE.]

(a) Have absolutely no means of shut-off on the downstream or discharge side of the atmospheric vacuum breaker;

(b) Not be installed in dusty or corrosive atmospheres;

(c) Not be installed where subject to flooding;

(d) Be installed a minimum of 6 inches above the highest downstream piping and/or outlets;

(e) Be used intermittently;

(f) Not be pressurized for more than 12 hours in any 24-hour period; and

(g) Be used to protect against backsiphonage only, not backpressure.

(8) A Pressure Vacuum Breaker Backsiphonage Prevention Assembly (PVB) or Spill-Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly (SVB) shall: [RPBA/RPDA installation figures not included. See ED. NOTE.]

(a) Be installed where occasional water discharge from the assembly caused by pressure fluctuations will not be objectionable;

(b) Have adequate spacing available for maintenance and testing;

(c) Not be subject to flooding;

(d) Be installed a minimum of 12 inches above the highest downstream piping and/or outlets;

(e) Have absolutely no means of imposing backpressure by a pump or other means. The downstream side of the pressure vacuum breaker backsiphonage prevention assembly or spill-resistant pressure vacuum breaker backsiphonage prevention assembly may be maintained under pressure by a valve; and

(f) Be used to protect against backsiphonage only, not backpressure.

(9) A Double Check Valve Backflow Prevention Assembly (DC) or Double Check Detector Backflow Prevention Assembly (DCDA): [Installation figures not included. See ED. NOTE.]

(a) Shall conform to bottom and side clearances when the assembly is installed inside a building;

(b) May be installed vertically as well as horizontally provided the assembly;

(A) Has internally spring loaded, not weighted checks;

(B) Has a pipe diameter 4 inches or smaller, or is specifically listed in the Department's Approved Backflow Prevention Assembly List;

(C) Is recommended by the manufacturer for vertical installation; and

(D) Has the normal flow upward.

(c) May be installed below grade in a vault provided water tight, fitted plugs are installed in the test cocks, but the assembly shall not be subject to continuous immersion;

(d) Shall not be installed at a height greater than 5 feet unless there is a permanently installed platform meeting Oregon Occupational Safety and Health Administration (OR-OSHA) standards to facilitate servicing the assembly;

(e) May be installed with reduced clearances if the pipes are 2 inches in diameter or smaller, provided that they are accessible for testing and repairing, and approved by the appropriate local administrative authority having jurisdiction;

(f) Shall have adequate drainage provided except that the drain shall not be connected to a sanitary or storm water drain. Installers shall check with the water supplier and appropriate local administrative authority having jurisdiction for additional requirements;

(g) Shall be protected from freezing when necessary; and

(h) Be used to protect against non-health hazards under backsiphonage and backpressure conditions.

(10) A Reduced Pressure Principle Backflow Prevention Assembly (RP) or Reduced Pressure Principle-Detector Backflow Prevention Assembly (RPDA): [Installation figures not included. See ED. NOTE.]

(a) Shall conform to bottom and side clearances when the assembly is installed inside a building. Access doors may be provided on the side of an above-ground vault;

(b) Shall always be installed horizontally, never vertically, unless they are specifically approved for vertical installation;

(c) Shall always be installed above the 100-year (1%) flood level unless approved by the appropriate local administrative authority having jurisdiction;

(d) Shall never have extended or plugged relief valves;

(e) Shall be protected from freezing when necessary;

(f) Shall be provided with an approved air gap drain;

(g) Shall not be installed in an enclosed vault or box unless a bore-sighted drain to daylight is provided;

(h) May be installed with reduced clearances if the pipes are 2 inches in diameter or smaller, are accessible for testing and repairing, and approved by the appropriate local administrative authority having jurisdiction;

(i) Shall not be installed at a height greater than 5 feet unless there is a permanently installed platform meeting Oregon Occupational Safety and Health Administration (OR-OSHA) standards to facilitate servicing the assembly; and

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(j) Be used to protect against a non-health hazard or health hazard for backsiphonage or backpressure conditions.

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

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

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.268, 448.273

Hist.: HD 9-1989, f. & cert. ef. 11-13-89; HD 1-1994, f. & cert. ef. 1-7-94; Renumbered from 333-61-099; 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; PH 34-2004, f. & cert. ef. 11-2-04

333-061-0072

Backflow Assembly Tester Certification

(1) The Department shall certify individuals who successfully complete all the requirements of these rules for testing backflow prevention assemblies. Only persons certified by the Department to test backflow prevention assemblies shall perform the required field-testing on backflow prevention assemblies.

(2) Requirements for initial application for Backflow Assembly Tester certification shall include:

(a) Satisfactory completion of a Department-approved Backflow Assembly Tester training course within 12 months prior to the Department receiving the applicant's completed application;

(b) Satisfactory completion of all written and physical-performance examinations, including questions specific to OAR 333-061-0070 through 333-061-0073, administered by a Department-approved certification agency;

(A) A minimum score of 75% is required to pass the Department-approved Backflow Assembly Tester written examination;

(B) A minimum score of 90% is required to pass the Department-approved Backflow Assembly Tester physical-performance examination; and

(C) The Department will make available a list of approved certification training and testing sources.

(c) Registration with the Construction Contractor's Board or licensure with the Landscape Contractor's Board, as required by ORS 448.279(2);

(d) Submission of proof of high school graduation or equivalent;

(e) Submission of a completed initial application with all required documentation as specified on the initial application form and in these rules; and

(f) Submission of an initial application fee as defined in OAR 333-061-0072(5).

(3) Requirements for Backflow Assembly Tester certification renewal shall include:

(a) All Backflow Assembly Tester certificates will expire on June 30 of every odd-numbered year, beginning June 30, 2005. Backflow Assembly Testers can only perform tests if they possess a current, valid certificate;

(b) Satisfactory completion of 0.5 CEU in backflow prevention-related fields taken at a Department-approved certification training agency within the 2-year period immediately prior to the date of the certification renewal application;

(c) Satisfactory completion of all written and physical-performance examinations, including questions specific to OAR 333-061-0070 through 333-061-0073, administered by a Department-approved certification agency;

(A) A minimum score of 75% is required to pass the Department-approved Backflow Assembly Tester written examination;

(B) A minimum score of 90% is required to pass the Department-approved Backflow Assembly Tester physical-performance examination; and

(C) The Department will make available a list of approved certification training and testing sources.

(d) Registration with the Construction Contractor's Board or licensure with the Landscape Contractor's Board, as required by ORS 448.279(2);

(e) Submission of yearly test gauge calibration reports performed in the same month every year, as determined by the Backflow Assembly Tester;

(f) Submission of a completed renewal application with all required documentation as specified on the renewal application form and in these rules;

(g) Submission of a renewal application fee, as defined in OAR 333-061-0072(5);

(h) The Department may grant certification renewal without a reinstatement fee for up to 30 days after the expiration date of a certificate. A reinstatement fee of \$50 will be added to the renewal fee for all renewal application fees received after the 30-day period; and

(i) A Backflow Assembly Tester who does not renew within 12 months of the expiration date of his or her certificate will be required to meet all requirements of an initial applicant in section (2) of these rules.

(4) The Department may issue Backflow Assembly Tester certification based on reciprocity if the Department determines the issuing state or entity has certification training and testing standards and qualifications substantially equivalent to the Department's certification training and testing standards and qualifications, and the applicant/Backflow Assembly Tester meets all requirements set forth in these rules, including:

(a) Submission of current certification from a state or entity having substantially equivalent certification training and testing standards, as determined by the Department;

(b) Submission of attendance and successful completion of an Oregon Department-approved Backflow Assembly Tester certification renewal class, including questions specific to OAR 333-061-0070 through 333-061-0073, within the 12 months prior to submitting the completed reciprocity application;

(A) A minimum score of 75% is required to pass the Department-approved Backflow Assembly Tester written examination;

(B) A minimum score of 90% is required to pass the Department-approved Backflow Assembly Tester physical-performance examination; and

(C) The Department will make available a list of approved certification training and testing sources.

(c) Registration with the Construction Contractor's Board or licensure with the Landscape Contractor's Board, as required by ORS 448.279(2);

(d) Submission of proof of high school graduation or equivalent;

(e) Submission of yearly test gauge calibration reports performed in the same month every year, as determined by the Backflow Assembly Tester;

(f) Submission of a completed reciprocity application form with all required documentation as specified on the reciprocity application form and in these rules; and

(g) Submission of a reciprocity application fee, as defined in OAR 333-061-0072(5).

(5) Application fees for Backflow Assembly Tester certification.

(a) Applicants for certification shall pay an application fee, made payable to the Department of Human Services, Health Services;

(b) The Department will not refund any fees once it has initiated processing an application;

(c) The application fees are:

(A) Initial Certification (2-years) \$70;

(B) Certificate Renewal (2-years) \$70;

(C) Reciprocity Review \$35 + Initial Certification fee;

(D) Reinstatement \$50 + Certificate Renewal fee; and

(E) Combination Certificate Renewal \$110.

(d) Initial certification fees shall be prorated to the nearest year for the remainder of the 2-year certification period; and

(e) The Department shall apply the Combination Certificate Renewal fee when an applicant simultaneously applies for renewal of his or her Backflow Assembly Tester and Cross Connection Specialist certifications.

(6) Enforcement actions for applicant/Backflow Assembly Tester.

(a) The Department may deny an initial application for certification, an application for renewal of certification, an application for certification based on reciprocity, or revoke a certification if the Department determines:

(A) The applicant/Backflow Assembly Tester provided false information to the Department;

(B) The applicant/Backflow Assembly Tester certification issued by another state or entity was revoked;

(C) The applicant/Backflow Assembly Tester has permitted another person to use his or her certificate number;

(D) The applicant/Backflow Assembly Tester has failed to properly perform backflow prevention assembly testing;

(E) The applicant/Backflow Assembly Tester has falsified a backflow assembly test report;

(F) The applicant/Backflow Assembly Tester has failed to obtain and maintain a Construction Contractor's Board registration or a Landscape Contractor's Board license, as required by ORS 448.279(2);

(G) The applicant/Backflow Assembly Tester has failed to comply with these rules or other applicable Federal, State or local laws or regulations; or

(H) The applicant/Backflow Assembly Tester performs backflow assembly tests with a gauge that was not calibrated for accuracy within the 12-month period prior to testing the assembly.

ADMINISTRATIVE RULES

(b) A person whose initial or renewal application has been denied, whose application for reciprocity has been denied, or whose certification has been revoked, has the right to appeal under the provisions of Chapter 183, Oregon Revised Statutes;

(c) Applicants or Backflow Assembly Testers who have been denied initial, renewal, or reciprocity certification or whose certifications have been revoked, may not reapply for certification for 1 year from the date of denial or revocation of certification; and

(d) Applicants or Backflow Assembly Testers may petition the Department prior to a year from the date of denial or revocation and may be allowed to reapply at an earlier date, at the discretion of the Department.

Stat. Auth.: ORS 431 & ORS 448
Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.268, 448.273
Hist.: HD 1-1994, f. & cert. ef. 1-7-94; 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; PH 34-2004, f. & cert. ef. 11-2-04

333-061-0073

Cross Connection Specialist Certification

(1) The Department shall certify individuals who successfully complete all the requirements of these rules as Cross Connection Specialists. Only persons certified by the Department shall administer cross connection control programs for community water systems. Community water systems with 300 or more service connections are required to have a Cross Connection Specialist administer the water system's cross connection control program, unless specifically exempted from this requirement by the Department.

(2) Requirements for initial application for Cross Connection Specialist certification shall include:

(a) Satisfactory completion of a Department-approved Cross Connection Specialist training course within 12 months prior to the Department receiving the applicant's completed application;

(A) A minimum score of 85% is required to pass the Department-approved Cross Connection Specialist written examination; and

(B) The Department will make available a list of approved certification training and testing sources.

(b) Registration with the Construction Contractor's Board or licensure by the Landscape Contractor's Board, as required by ORS 448.279(2);

(c) Submission of proof of high school graduation or equivalent;

(d) Submission of documentation of 1-year of experience in water systems or plumbing;

(e) Submission of a completed initial application with all required documentation, as specified on the initial application form and in these rules; and

(f) Submission of an initial application fee, as defined in OAR 333-061-0073(5).

(3) Requirements for Cross Connection Specialist certification renewal shall include:

(a) All Cross Connection Specialist certificates will expire on June 30 of every odd numbered year, beginning June 30, 2005;

(b) Satisfactory completion of a total of at least 0.6 CEU in cross connection-related fields taken within the 2-year period immediately prior to the date of the certification renewal application. Training courses must be taken at Department-approved training agencies or be Oregon Environmental Services Advisory Council-approved courses;

(A) A minimum score of 85% is required to pass the Department-approved Cross Connection Specialist written examination; and

(B) The Department will make available a list of approved certification training and testing sources.

(c) Registration with the Construction Contractor's Board or licensure by the Landscape Contractor's Board, as required by ORS 448.279(2);

(d) Submission of a completed renewal application with all required documentation, as specified on the renewal application form and in these rules;

(e) Submission of a renewal application fee as defined in OAR 333-061-0073(5);

(f) The Department may grant certification renewal without a reinstatement fee for up to 30 days after the expiration date of a certificate. A reinstatement fee of \$50 will be added to the renewal fee for all renewal application fees received after the 30-day period; and

(g) A Cross Connection Specialist who does not renew within 12 months of the expiration date of his or her certificate will be required to meet all requirements of an initial applicant in section (2) of this rule.

(4) The Department may issue Cross Connection Specialist certification based on reciprocity if the Department determines the issuing state or entity has certification training and testing standards and qualifications substantially equivalent to the Department's certification training and testing

standards and qualifications, and the applicant meets all requirements in these rules:

(a) Submission of current certification from a state or entity having substantially equivalent certification training and testing standards, as determined by the Department;

(b) Submission of attendance and successful completion of an Oregon Department-approved Cross Connection Specialist certification renewal class within the 12 months prior to submitting the completed application;

(A) A minimum score of 85% is required to pass the Department-approved Cross Connection Specialist written examination; and

(B) The Department will make available a list of approved certification training and testing sources.

(c) Registration with the Construction Contractor's Board or licensure with the Landscape Contractor's Board, as required by ORS 448.279(2);

(d) Submission of proof of high school graduation or equivalent;

(e) Submission of a completed reciprocity application form with all required documentation as specified on the reciprocity application form and in these rules; and

(f) Submission of a reciprocity application fee as defined in OAR 333-061-0073(5).

(5) Application fees for Cross Connection Specialist certification.

(a) Applicants shall pay an application fee, made payable to the Department of Human Services, Health Services;

(b) The Department will not refund any fees once it has initiated processing an application;

(c) The fees are:

(A) Initial Certification (2-years) \$70;

(B) Certificate Renewal (2-years) \$70;

(C) Reciprocity Review \$35 + Initial Certification fee;

(D) Reinstatement \$50 + Certificate Renewal fee; and

(E) Combination Certificate Renewal \$110.

(d) Initial certification fees shall be prorated to the nearest year for the remainder of the 2-year certification period; and

(e) The Department shall apply the Combination Certification Renewal fee when an applicant simultaneously applies for renewal of his or her Backflow Assembly Tester and Cross Connection Specialist certifications.

(6) Enforcement actions for applicant/Cross Connection Specialist.

(a) The Department may deny an initial application for certification, an application for renewal of certification, an application for certification based on reciprocity, or revoke a certification if the Department determines:

(A) The applicant/Cross Connection Specialist provided false information to the Department;

(B) The applicant/Cross Connection Specialist certification issued by another state or entity was revoked;

(C) The applicant/Cross Connection Specialist has permitted another person to use his or her certificate number;

(D) The applicant/Cross Connection Specialist has falsified a survey/inspection/Annual Summary Report;

(E) The applicant/Cross Connection Specialist has failed to obtain and maintain a Construction Contractor's Board registration or a Landscape Contractor's Board license, as required by ORS 448.279(2); or

(F) The applicant/Cross Connection Specialist has failed to comply with these rules or other applicable Federal, State or local laws or regulations.

(b) A person whose initial or renewal application has been denied, whose application for reciprocity has been denied, or whose certification has been revoked, has the right to appeal under the provisions of Chapter 183, Oregon Revised Statutes;

(c) Applicants or Cross Connection Specialists who have been denied initial, renewal, or reciprocity certification or who have had their certification revoked may not reapply for certification for 1 year from the date of denial or revocation of certification; and

(d) Applicants or Cross Connection Specialists may petition the Department prior to a year from the date of denial or revocation and may be allowed to reapply at an earlier date, at the discretion of 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; PH 34-2004, f. & cert. ef. 11-2-04

333-061-0074

Cross Connection Training Programs, Course, and Instructor Requirements

(1) In order to qualify as a Department-approved Cross Connection Specialist or Backflow Assembly Tester-training program, the following requirements must be met:

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(a) The training program must keep permanent records on attendance and performance of each student that enrolls in a course;

(b) The training program must submit the names of students who have successfully completed the training course to the Department upon completion of the training course;

(c) The training schedule must be set in advance and the schedule must be submitted to the Department quarterly for review and publication;

(d) The backflow training program must maintain a proper ratio of student-to-training equipment. A maximum ratio of three students for each backflow assembly test station is allowed for the Backflow Assembly Tester-training course;

(e) The training program must provide uniform training at all course locations;

(f) The training program shall provide the training materials necessary to complete the course. The training materials must be updated annually and submitted to the Department for approval; and

(g) The training program must have the following minimum training equipment available for each course:

(A) Each test station for Backflow Assembly Tester initial training and certification renewal courses shall include:

(i) An operating pressure vacuum breaker backsiphonage prevention assembly, spill-resistant pressure vacuum breaker backsiphonage prevention assembly, double check valve backflow prevention assembly, and a reduced pressure principle backflow prevention assembly, with appropriate test gauges for each assembly; and

(ii) A backflow prevention assembly failure simulator shall also be provided that is capable of simulating leaking check valves, shutoff valves, and relief valve failures.

(B) The training aids for the Backflow Assembly Tester and Cross Connection Specialist-training courses shall include the atmospheric vacuum breaker, pressure vacuum breaker backsiphonage prevention assembly, spill-resistant pressure vacuum breaker backsiphonage prevention assembly, double check valve backflow prevention assembly, reduced pressure principle backflow prevention assembly, and a variety of test gauges.

(h) The training program must maintain uniform course curriculum according to sections (2), (3), (4) and (5) of this rule section, and maintain uniform instructor requirements according to section (6) of this rule section, subject to approval by the Department.

(2) Requirements for the Cross Connection Specialist-initial training course shall include:

(a) A minimum of 30 hours of training;

(b) The course content shall contain, but is not limited to, the following topics:

(A) Definitions, identification of cross connection hazards, and the hydraulics of backflow;

(B) Approved cross connection control methods, backflow prevention assembly specifications, and testing methods used for Department-approved backflow prevention assemblies;

(C) Cross connection control requirements for public water systems, implementation of a cross connection control program, and writing a local cross connection control ordinance;

(D) Public education and record-keeping requirements for an effective cross connection control program;

(E) Facility water use inspection techniques and hands-on inspection of local facilities to identify actual or potential cross connections;

(F) Cross connection control program enforcement and managing a Backflow Assembly Tester program; and

(G) Review and discussion of Cross Connection Specialist safety issues.

(c) A minimum score of 85% is required to pass the Department-approved Cross Connection Specialist written examination.

(3) Requirements for the Backflow Assembly Tester-initial training course shall include:

(a) A minimum of 40 hours of training;

(b) The course content shall contain, but is not limited to, the following topics:

(A) Definitions, identification of cross connections, and the hydraulics of backflow;

(B) Hazards associated with backflow pollution and contamination of potable water, approved cross connection control methods, and cross connection control program requirements for public water systems;

(C) Backflow prevention assembly approval requirements, specifications and installation requirements for approved backflow prevention assemblies, and backflow prevention assembly repair techniques;

(D) Complete disassembly and reassembly of each type of backflow prevention assembly;

(E) Hands-on demonstration of the correct test procedures, troubleshooting for each type of backflow prevention assembly, and diagnosis of two failure and/or abnormal conditions during the hands-on backflow assembly test of each type of backflow prevention assembly;

(F) Test gauge calibration and gauge accuracy verification methods; and

(G) Review and discussion of Backflow Assembly Tester safety issues.

(c) A minimum score of 75% is required to pass the Department-approved Backflow Assembly Tester written examination; and

(d) A minimum score of 90% is required to pass the Department-approved Backflow Assembly Tester physical-performance examination.

(4) Requirements for Cross Connection Specialist certification renewal shall include:

(a) A minimum of 0.6 CEU of training;

(b) The course content shall contain, but is not limited to, the following topics:

(A) Review of cross connection control regulations OAR 333-061-0070 through 0073;

(B) Review and discussion of recent backflow incidents and identification of cross connections; and

(C) Review and discussion of Cross Connection Specialist safety issues.

(5) Requirements for Backflow Assembly Tester certification renewal shall include:

(a) A minimum of 0.5 CEU of training, excluding examination time;

(b) The course content shall contain, but is not limited to, the following topics:

(A) Review of cross connection control regulations OAR 333-061-0070 through 0073;

(B) Review of approved test procedures for backflow prevention assemblies;

(C) Hands-on demonstration of the correct test procedures for each type of backflow prevention assembly;

(D) The correct student diagnosis and explanation of two failure and/or abnormal conditions during the hands-on backflow prevention assembly test of each type of backflow prevention assembly;

(E) Review and discussion of Backflow Assembly Tester safety issues; and

(F) Written examination that includes questions on cross connection control regulations OAR 333-061-0070 through 0073.

(c) A minimum score of 75% is required to pass the Department-approved Backflow Assembly Tester written examination; and

(d) A minimum score of 90% is required to pass the Department-approved Backflow Assembly Tester physical-performance examination.

(6) Instructor qualification requirements shall include:

(a) To be eligible as an instructor for Cross Connection Specialist-initial training or certification renewal course, the following experience in the cross connection control field is required:

(A) Must be currently certified as a Cross Connection Specialist in Oregon;

(B) Must have 2-years experience in enforcement of cross connection control requirements, or as a certified Cross Connection Specialist, or have related experience, subject to approval by the Department;

(C) Must participate in two complete Cross Connection Specialist training courses as a student instructor assigned to teach a portion of the curriculum. A student instructor training program schedule must be submitted to the Department for approval before training begins;

(D) Must receive a recommendation from the instructor of record for approval as an instructor. An unfavorable recommendation must be documented by supporting information and may be challenged by the trainee or by the Department; and

(E) Must attend at least one instructor update meeting provided by the Department each year.

(b) To be eligible as an instructor for the Backflow Assembly Tester initial training or certification renewal course, the following experience in the backflow prevention field is required:

(A) Must be currently certified as a Backflow Assembly Tester in Oregon;

(B) Must have 2-years experience as a certified Backflow Assembly Tester and experience installing, testing backflow prevention assemblies, or as a vocational instructor, or have related experience, subject to approval by the Department;

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(C) Must participate in two complete Backflow Assembly Tester training courses as a student instructor assigned to teach a portion of the text curriculum and the physical – performance portion of the curriculum. A student instructor training program schedule must be submitted to the Department for approval before training begins;

(D) Must receive a recommendation from the instructor of record for approval as an instructor. An unfavorable recommendation must be documented by supporting information and may be challenged by the trainee or by the Department; and

(E) Must attend at least one instructor update meeting provided by the Department each year.

(c) The Department shall maintain a list of qualified instructors.
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; PH 34-2004, f. & cert. ef. 11-2-04

Adm. Order No.: PH 35-2004(Temp)

Filed with Sec. of State: 11-10-2004

Certified to be Effective: 11-10-04 thru 5-6-05

Notice Publication Date:

Rules Adopted: 333-050-0141

Rules Amended: 333-050-0010, 333-050-0020, 333-050-0030, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0080, 333-050-0090, 333-050-0100, 333-050-0130, 333-050-0140

Subject: Retroactively amends 333-050-0010, 333-050-0020, 333-050-0030, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0080, 333-050-0090, 333-050-0100, 333-050-0130, 333-050-0140 and adopts 333-050-0141 relating to school immunization. These rule changes were previously submitted to the Secretary of State's office and became effective on December 13, 2002. Excepting one new rule regarding the effective date, these rules are identical to the rules previously filed with the Secretary of State's office on December 13, 2002.

The amendments further defined medical exemption to differentiate between susceptibles and those who are immune; clarified that alternative programs and charter schools are subject to the same requirements as other schools; gave a thirty-day grace period to provide immunization records for school children who are considered homeless; allowed health departments to rescind exclusion orders for vaccines given with the four-day grace period allowed by the Advisory Committee on Immunization Practices; added additional details about the process used to approve computer-tracking systems; added language about excluding children who are susceptible from school/facility attendance in case of disease outbreak; and added language to college requirements about temporary suspension of vaccine requirements.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-050-0010

Definitions Used in the Immunization Rules

As used in OAR 333-050-0010 through 333-050-0140:

(1) "Administrator" means the principal or other person having general control and supervision of a school/facility.

(2) "Certificate of Immunization Status" means a form provided or approved by Health Services on which to enter the child's immunization record requiring the following:

(a) Evidence of Immunization signed by the parent, health care practitioner or an authorized representative of the Department; and/or

(b) A written statement of medical or immunity exemption signed by a physician or an authorized representative of the Department; and/or

(c) A written statement of religious exemption signed by the parent; and/or

(d) A written statement of disease history (immunity exemption) for varicella signed by a parent, physician or authorized representative of the Department.

(3) "Certificate of Immunization Status Addendum" means a form provided or approved by Health Services on which to enter the child's immunizations received after the initial series of D/T, polio and MMR. It does not replace the Certificate of Immunization Status form. The Addendum should be attached to the child's original Certificate of Immunization Status form. The dates do not need to be transcribed onto the original Certificate of Immunization Status form.

(4) "Children's Facility" or "Facility" means:

(a) A certified child care facility as described in ORS 657A.250 to 657A.460;

(b) A program operated by, or sharing the premises with, a certified child care facility, school or post-secondary institution where care is provided to children, six weeks of age to kindergarten entry; or

(c) A program providing child care or educational services to children including Head Start and preschools, six weeks of age to kindergarten entry, in a residential or nonresidential setting;

(d) This definition does not apply to facilities that are exempted by Health Services. Exempted facilities are those which:

(A) Are primarily supervised training in a specific subject, including, but not limited to, dancing, drama, or music;

(B) Are primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group;

(C) Are operated at a facility where children may only attend on a limited basis not exceeding a total of five days per calendar year; or

(D) Are operated on an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care.

(5) "Contraindication" means either a child or a household member's physical condition especially any condition or disease which renders a particular vaccine improper or undesirable in accordance with the current recommendations of the Advisory Committee on Immunization Practices of the U.S. Public Health Services and the current issue of the Red Book (The Report of the Committee on Infectious Disease, The American Academy of Pediatrics).

(6) "County Immunization Status Form" means a form provided by Health Services to the Department (or school/facility if there is no Department) to report annually to Health Services the number of children as specified, in the area served, and the number susceptible to the vaccine preventable diseases covered by these rules.

(7) "Department" means the District or County Board of Health, Public Health Officer, Public Health Administrator or Health Department having jurisdiction within the area.

(8) "Evidence of Immunization" means an appropriately signed and dated statement indicating the month and year each dose of each vaccine was received. This is used for the determination of age-specific vaccine(s) requirements.

(9) "Exclude" or "Exclusion" means not being allowed to attend a school/facility pursuant to an exclusion order from the Department based on non-compliance with the requirements of ORS 433.267(1), and these rules. Exclusion occurs when records have not been updated by the starting time of the school/facility on the specified exclusion day.

(10) "Exclusion Order for Incomplete Immunization or Insufficient Information" means a form provided or approved by Health Services for the Departments' and Health Services' use in excluding a child whose record is in non-compliance with the vaccine requirements of OAR 333-050-0050(2) or who has insufficient information on his/her record. Forms submitted for approval must contain the substantive content of the Health Services form.

(11) "Exclusion Order for No Record" means a form provided or approved by Health Services for the Departments', Health Services' and schools'/facilities' use in excluding a child with no record. Forms submitted for approval must contain the substantive content of the Health Services form.

(12) "Health Care Practitioner" means a practitioner of the healing arts who has within the scope of the practitioner's license, the authority to order immunizations, to include: M.D., D.O., licensed nurse practitioners with prescription writing privileges, and licensed physicians' assistants with prescription writing privileges who are working under the sponsorship of an M.D., D.O., or a registered nurse working under the direction of an M.D. or a D.O.

(13) "Health Services" means the Oregon Department of Human Services, Health Services, Immunization Program.

(14) "Medical or Immunity Exemption" means a written statement signed by a physician or an authorized representative of the Department that the child should be exempted from receiving specified immunization(s). Medical or Immunity exemptions include both of the following:

(a) "Immunity Exemption" means an exemption due to a disease history based on a health care practitioner's diagnosis or the results of an immune titer. Representatives of the Departments will automatically authorize parental signature for verification of history of varicella. Children with an immunity exemption are counted as complete for the vaccine series they are exempt from.

ADMINISTRATIVE RULES

(b) "Medical Exemption" means an exemption based on a specific medical diagnosis resulting from a specific medical contraindication. Children with a medical exemption are counted as having a medical exemption and are considered susceptible to the diseases they have not received immunizations for.

(15) "New Enterer" means a child who meets one of the following criteria:

(a) Initially attending an Oregon facility (no previous attendance at any Oregon facility);

(b) Initially attending a school at the entry level (kindergarten or the first grade, whichever is the entry level);

(c) Initially attending a school/facility from a home-school setting at any grade (preschool through the 12th grade); or

(d) Initially attending a school/facility after entering the United States from a foreign country at any grade (preschool through 12th grade).

(16) "Non-Compliance" means failure to comply with any requirement of ORS 433.267(1) or these rules.

(17) "Parent" means a parent, guardian, any adult responsible for the child, a person who is emancipated or has reached the age of majority.

(18) "Physician" means a physician licensed by the Board of Medical Examiners for the State of Oregon or by the Naturopathic Board of Examiners or a physician similarly licensed by another state or country in which the physician practices or a commissioned medical officer of the Armed Forces or Public Health Service of the United States.

(19) "Primary Review Summary" means a form provided or approved by Health Services to schools/facilities for enclosure with records forwarded to the Department for secondary review and follow up. Forms submitted for approval must contain the substantive content of the Health Services form.

(20) "Private Provider" means any health care practitioner as defined in Section (12) of this rule and not identified as a public provider.

(21) "Public Provider" means county health jurisdictions, their contractees and other governmental entities receiving vaccine from the Immunization Program, Oregon Department of Human Services.

(22) "Record" means a statement relating to compliance with the requirements of ORS 433.267(1)(a) through (d) and these rules.

(23) "Religion" means any system of beliefs, practices or ethical values.

(24) "Religious Exemption" means a statement signed by a parent that the child has not been immunized as prescribed by OAR 333-050-0050(2), because the child is being reared as an adherent to a religion, the teachings of which are opposed to such immunization.

(25) "School" means a public, private, charter or parochial educational program, alternative program or school offering kindergarten through grade 12 or any part thereof. Schools run by residential correctional facilities are also subject to the requirements of these rules.

(26) "School Year" or "SY" means an academic year as adopted by the school or school district (usually September through June).

(27) "Susceptible" means being at risk of contracting one of the diseases covered by these rules, by virtue of being in one, or more of the following categories:

(a) Not being complete on the immunizations required by these rules;

(b) Possessing a medical exemption from any of the vaccines required by these rules due to a specific medical diagnosis based on a specific medical contraindication; or

(c) Possessing a religious exemption for any of the vaccines required by these rules.

(28) "These Rules" means OAR 333-050-0010 through 333-050-0140.

(29) "Transferring Child" means a child who:

(a) Moves from one Oregon facility to another Oregon facility. In order to qualify as a transferring child, the facility must request records from the previous facility whose name must be documented on the Exclusion Order for No Record;

(b) Moves from one Oregon school to another Oregon school, except when the move is due to the normal progression of grade levels, such as to a junior high or senior high from a feeder school;

(c) Moves from a school in another state to an Oregon school.

(30) "Up-to-Date" means currently on schedule and not subject to exclusion, based on the immunization schedule for spacing doses, as prescribed in OAR 333-050-0120.

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

Stat. Auth.: ORS 433.001, 433.004, 443.006 & 433.235 - 433.284

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 15-1986, f. & ef. 7-15-86; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f.

& cert. ef. 12-2-94; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0021; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05

333-050-0020

Purpose and Intent

(1) The purpose of these rules is to implement ORS 433.235 et seq., which requires evidence of immunization or a medical or a religious exemption for each child as a condition of attendance in any school/facility and which requires exclusion from school/facility attendance until such requirements are met.

(2) The intent of the school/facility immunization statutes and these rules is to require that:

(a) A new enterer provide a signed and dated Certificate of Immunization Status form documenting either evidence of immunization or a religious and/or medical or immunity exemption. If age appropriate, required for the child's grade level, and the child has not claimed an exemption, a minimum of one dose each of the following vaccines must be received prior to attendance: Polio, Measles, Mumps, Rubella, Hepatitis B, Varicella, Haemophilus influenzae Type b vaccine and Diphtheria/Tetanus containing vaccine. (See OAR 333-050-0120);

(b) A transferring child provide evidence of immunization or an exemption(s), within 30 days of initial attendance; and

(c) A child currently attending not be allowed to continue in attendance without complete, incomplete but up-to-date evidence of immunization or an exemption(s). Beginning SY 2000/2001, Hepatitis B, Varicella and a second dose of measles containing vaccine will be phased in by grade (see OAR 333-050-0120).

(d) The only exception is for family child care homes, either registered or exempt from registration providing child care, six weeks of age to kindergarten entry, in a residential or nonresidential setting. These programs are exempt from all requirements except an up-to-date Certificate of Immunization Status form on each child in attendance.

(3) Nothing in these rules prohibits a public school from adopting additional or more stringent rules (in accordance with the law) as long as the rules are in compliance with U.S. Public Health Service Advisory Committee on Immunization Practices.

(4) Nothing prohibits a private school, children's facility, or post-secondary educational institution from adopting additional or more stringent requirements than the statutes or rules as long as medical and religious exemptions are included and the requirements are in compliance with the United States Public Health Advisory Committee on Immunization Practices recommendations.

Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0025; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05

333-050-0030

Visitors, Part-Time Students, and Residents

(1) Any child visiting or attending school for greater than five school days in a given school year or residing on the premises of a school/facility regardless of whether the child attends classes, at any grade preschool through Grade 12, shall be subject to the requirements of either a new enterer or transferring child as appropriate. Such residents and visitors for the purposes of these rules are in attendance.

(2) Children receiving child care in a certified child care facility are subject to these immunization requirements unless they attend fewer than five days in a calendar year.

(3) For facilities providing drop-in child care, a child may attend up to four days without a Certificate of Immunization Status on file. Before allowing attendance on the fifth visit, a Certificate of Immunization Status must be provided showing at least one dose of each required vaccine or an appropriately signed exemption.

Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Stats. Implemented:

Hist.: HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0026; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05

333-050-0040

Statements (Records) Required

(1)(a) The statement initially documenting evidence of immunization or exemption under ORS 433.267(1)(a) through (d) must be on a Certificate of Immunization Status form. Evidence of immunization shall include at

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least the month and year of each dose of each vaccine received and must be appropriately signed and dated to indicate verification by the signer. Presigned Certificate of Immunization Status forms are not allowable. If a Certificate of Immunization Status form is signed but not dated, the person who receives the form at the school or facility should date the form with the date it was received; or

(b) The school/facility may choose to complete a Certificate of Immunization Status form by transcribing dates from and attaching an already appropriately completed, signed and dated record. The Certificate of Immunization Status needs to be signed and dated by the person transcribing the information. A reference should be made to the attached record; or

(c) The parent or school/facility may choose to complete a Certificate of Immunization Status form by transcribing dates from and attaching one of the following records listed in (A) through (C). The Certificate of Immunization Status form must be signed and dated by the person transcribing the information. A reference should be made to the attached record on the Certificate of Immunization Status form.

(A) A health care practitioner documented immunization record;

(B) An unsigned record on health care practitioner letterhead.

(C) An unsigned record printout from the statewide immunization information system, Oregon Immunization ALERT.

(d) The statements updating the initial evidence of immunization or exemption on a Certificate of Immunization Status form under ORS 433.267(1)(a) through (d) include only the following options:

(A) Entering the updated evidence of immunization or exemption on the initial Certificate of Immunization Status form, insuring that the parent, health care practitioner, or an authorized representative of the Department re-signs and dates the form;

(B) Entering the updated evidence of immunization or exemption on a new Certificate of Immunization Status form, insuring that the parent, health care practitioner, or an authorized representative of the Department signs and dates the form;

(C) Entering the updated evidence of immunization on a valid county-issued Exclusion Order for Incomplete Immunization or Insufficient Information insuring that the parent, health care practitioner, or an authorized representative of the Department signs and dates the form (or uses the official department stamp);

(D) Entering the updated evidence of immunization on a piece of paper, insuring that the parent, health care practitioner, or an authorized representative of the Department signs and dates the paper (or uses the official department stamp); or

(E) The school/facility may choose to update the evidence of immunization on a form provided by the school/facility containing the language shown in Exhibit 3;

(F) The parent or school/facility may choose to update the Certificate of Immunization Status by transcribing an already appropriately completed, signed and dated record which is attached to the Certificate of Immunization Status. The Certificate of Immunization Status needs to be signed and dated by the person transcribing the information. A reference should be made to the attached record;

(G) The parent may choose to update the evidence of immunization by attaching to a Certificate of Immunization Status form one of the following records:

(i) A health care practitioner documented immunization record;

(ii) An unsigned record on health care practitioner letterhead; or

(iii) An unsigned record printout from the statewide immunization system, Oregon Immunization ALERT.

(e) The statement signed by the parent of a transferring child to a school/facility indicating that the record will be provided within 30 days of initial attendance, under ORS 433.267(1)(d), shall be printed on the top portion of the Exclusion Order for No Record which has been presigned by an authorized representative of the Department.

(A) The administrator shall make every effort to ensure that the parent of a transferring child signs the Exclusion Order for No Record when the parent brings the child to the school/facility to register or brings the child on the first day of attendance;

(B) The administrator shall determine the exclusion date to be used for the Exclusion Order for No Record. The exclusion date must be no sooner than 30 days after initial attendance, but no later than the next mandated "No Record" exclusion (third Wednesday in February). When the parent signs the Exclusion Order for No Record, the administrator provides the parent a copy of the order.

(C) If the parent did not accompany the transferring child to the school/facility to register or accompany the child on the first day of atten-

dance, the administrator will so indicate on the Exclusion Order for No Record. If for some other reason the Exclusion Order for No Record was not signed by the parent, the administrator will so indicate on the order. If the parent did not receive a copy of the Exclusion Order for No Record, the administrator must mail a copy of the Exclusion Order for No Record to the parent no later than 14 days before the exclusion date;

(D) Where the parent does not comply (30 days or more have passed) with the signed statement in subsection (1)(e) of this rule, the administrator shall enforce the presigned Exclusion Order for No Record and exclude the child in accordance with the time schedule in OAR 333-050-0080(1)(b).

(2) If the child transfers to a new school district, except when the move is due to the normal progression of grade levels, such as to a junior high or senior high from a feeder school, the receiving school must assure that the transferred records are on a signed Certificate of Immunization Status form or another Health Services-approved form. The original transferred records that are not on an approved form shall be attached to a Certificate of Immunization Status form and the form shall be marked with a reference to the attached records, signed, and dated by the person transcribing the information on the form.

(3) The records relating to the immunization status of children in schools shall be part of the education record and shall be transferred to the receiving schools pursuant to ORS 326.575(2) within 30 days pursuant to ORS 433.267(1)(d).

(4) When a new enterer is admitted in error to a school or facility without an immunization history or appropriately signed exemption, the school or facility will immediately issue an Exclusion Order for No Record. The exclusion date shall be fourteen days after the date the exclusion order is mailed to the parent.

(5)(a) When a child is determined by the school or school district to be homeless and does not have a completed Certificate of Immunization Status on file with the school, an Exclusion Order for No Record will be issued and a copy will be given to the parent or guardian. The exclusion date will be 30 days from the date of enrollment. If the parent is not at registration, a copy of the Exclusion Order for No Record will be sent to the parent via the student at least fourteen days prior to the exclusion date.

(b) School staff shall make every effort to help the family compile an immunization record for the student, including requesting a record from a previous school, Oregon Immunization ALERT or a previous medical provider.

(6) Where a child attends both a facility and a school, the school is responsible for reporting and for enforcing these rules in accordance with the school/facility vaccine requirements. However, because of the need for outbreak control when school is not in session, the facility administrator will be responsible for requesting that the parent also provide an up-to-date Certificate of Immunization Status to the facility. If the parent doesn't comply, the facility administrator shall inform the parent that in the event of an outbreak the child will be excluded until it is determined that the child is not susceptible.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284
Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 15-1986, f. & ef. 7-15-86; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0030; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05

333-050-0050

Immunization Requirements

(1) For purposes of this section, the following definitions and procedures apply:

(a) "Diphtheria/Tetanus containing vaccines":

(A) "DTP" — Injectable Diphtheria and Tetanus toxoids combined with whole cell pertussis vaccine. DTP vaccine is for use in children up to the seventh birthday;

(B) "DTaP" — Injectable Diphtheria and Tetanus toxoids combined with acellular pertussis vaccine. DTaP vaccine is for use in children up to the seventh birthday;

(C) "DT" — Injectable combined Diphtheria and Tetanus toxoids. Although Pertussis containing vaccine is recommended (but not required) for children up to the seventh birthday, particularly those in early infancy where the hazard of Pertussis is greatest, pediatric Diphtheria/Tetanus vaccine (DT) may be substituted for DTP and DTaP. DT vaccine is for use in children up to the seventh birthday;

(D) "Td" — Injectable combined Tetanus and Diphtheria toxoids. This is for use in children past their seventh birthday. This vaccine is com-

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parable to DTP, DTaP and DT vaccines for immunization against diphtheria and tetanus.

(b) "Polio vaccines":

(A) "TOPV" — Trivalent oral polio vaccine (Sabin); or

(B) "IPV" — Injectable inactivated polio vaccine.

(c) "Measles, Mumps, and Rubella injectable vaccines":

(A) "MMR" — Combined Measles, Mumps, and Rubella injectable vaccine;

(B) "MR" — Combined Measles and Rubella injectable vaccine;

(C) "Measles" — Single antigen injectable vaccine;

(D) "Mumps" — Single antigen injectable vaccine;

(E) "Rubella" — Single antigen injectable vaccine;

(F) These vaccines may be given in combined forms, and/or as a single antigen vaccine. It is recommended that these vaccines be given at 12 to 15 months of age.

(G) Measles containing vaccines — includes A through C above. Second dose, if required, must be at least 28 days after first dose.

(d) "*Haemophilus influenzae Type b* (Hib) vaccines" — A Hib vaccine is for use in children up to the fifth birthday.

(e) "Hepatitis B injectable vaccines."

(f) "Varicella (Chickenpox) vaccine."

(g) Interrupted series: If there is a lapse of time between doses longer than that recommended by the standard described in OAR 333-050-0120, the schedule should not be restarted. Immunization may resume with the next dose in the series.

(h) Partial doses: Because the efficacy of immunizing with partial doses of the vaccines listed in subsection (1)(a) through (f) of this rule is not known, this procedure does not satisfy the requirements of these rules.

(2) For purposes of ORS 433.267(1), immunizations are required as follows:

(a) Diphtheria/Tetanus containing vaccine — Four doses, unless:

(A) The fourth dose was received prior to four years of age, in which case a fifth dose is also required;* or

(B) The third dose of Diphtheria/Tetanus containing vaccine was received on or after the seventh birthday, in which case the child is complete with three doses; or

(C) A child enrolled before SY 1998/99 is complete for Diphtheria/Tetanus containing vaccine with three doses of DTaP, DTP or DT, if the first dose of DTaP, DTP or DT was received at or after the first birthday and the third dose was received at or after the child's fourth birthday.

(b) Polio — Four doses* unless:

(A) The third dose was given at or after the fourth birthday, in which case the child is complete with three doses of polio vaccine; or

(B) The student is 18 years of age or older. Polio vaccination at or after the 18th birthday is not required.

(c) Measles — The first dose, must be received at or after 12 months of age. For the purposes of assessment for compliance with these rules, a dose is considered in compliance if the dose was given in the same month and year as the child's first birthday. Second dose, if required, must be received at least 28 days after first dose (See **Table 1**);

(d) Rubella — One dose, must be received at or after 12 months of age.

(e) Mumps — One dose, must be received at or after 12 months of age.

(f) *Haemophilus influenzae Type b* (Hib) vaccine — Up to four doses depending on the child's current age and when previous doses were administered. (See **Table 1** to determine the number of required doses.)

(g) Hepatitis B — Up to three doses (See **Table 1**). If the first dose was received at or after eleven years of age and the second dose is received at least four months after dose one, the child is complete with two doses.

(h) Varicella — Up to two doses, depending on the child's age when the first dose was administered. The first dose must be received at or after 12 months of age and after March 1995, the date the vaccine was licensed in the United States. For the purposes of assessment for compliance with these rules, a dose is considered in compliance if the dose was given in the same month and year as the child's first birthday. (See **Table 1** to determine the number of required doses).

* A child cannot be excluded from school for not having the 5th dose of Diphtheria/Tetanus containing vaccine or 4th dose of Polio until kindergarten.

(3) The State Health Officer shall have the right to suspend temporarily any portion of these requirements due to unforeseen circumstances. Health Services shall give notice in writing to all local health departments when the suspension takes effect. Additional written notice shall be given to all local health departments when the suspension is lifted. Local health departments will notify schools/facilities of any temporary suspensions that

affect their procedures under these rules. Any waived vaccine doses will be required at the next review cycle following the lifting of the suspension.

(4) The local public health officer, after consultation with Health Services, may allow a child to attend a school or facility without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The Department shall provide a letter signed by the local health officer to the parent of the affected student detailing which vaccines the student is being exempted from. The letter must state that the student will receive an exclusion order if the student's record is not updated with the missing doses prior to the next exclusion cycle.

(b) A copy of the letter must be attached to the student's Certificate of Immunization Status on file at the school or facility.

(c) A photocopied form letter signed by the local health officer may be used by the Department when the shortage is expected to affect more than one child.

(d) If the vaccine is still unavailable at the next exclusion cycle, the Department, with the agreement of Health Services, will not issue exclusion orders for the unavailable vaccine.

(5) Medical or immunity exemptions from immunization requirements are allowed as follows:

(a) The following immunity exemptions satisfy the immunization requirements for the specified vaccines:

(A) Exemption for Measles, Mumps or Rubella vaccination due to a disease history may be certified by a physician or an authorized representative of the Department for a child who has immunity based on a health care practitioner's diagnosis;

(B) Exemption for Measles, Mumps or Rubella vaccination due to a documented immune titer may be certified by a physician or an authorized representative of the Department;

(C) Exemption for Hib conjugate vaccination may be certified by a physician or authorized representative of the Department for a child who experienced invasive *Haemophilus influenzae Type b* disease at 24 months of age or older.

(D) Exemption for Varicella vaccine may be signed by the parent for history of varicella. The date of the disease is not required. This exemption will be automatically authorized by the Department.

(E) Exemption for Hepatitis B vaccination based on laboratory confirmation of immunity or confirmation of carrier status may be certified by a physician or authorized representative of the Department.

(b) Children possessing the following medical exemptions are susceptible to the diseases for which they are exempt from vaccination:

(A) Exemption for rubella or varicella vaccination may be certified by a physician or an authorized representative of the Department for a post-pubertal female when it is believed that there is a significant risk of her being or becoming pregnant within one month for varicella or three months for rubella;

(B) Exemption for one or more immunization(s), shall be established by a specific diagnosis based on a specific medical contraindication certified by a physician or an authorized representative of the Department. The vaccine(s) and the specific medical diagnosis must be documented on the record.

(c) Exemptions submitted to the school/facility must be in English.

(6) A child may attend a school/facility under ORS 433.267(1) if the child is incomplete but up-to-date and remains up-to-date and in compliance with immunization schedules for spacing between doses presented in OAR 333-050-0120.

(7) If evidence is presented to the Department that an exclusion order was issued in error because a vaccine was given within the four-day grace period recommended by the Advisory Committee on Immunization Practices as published in the General Recommendations on Immunization, the Department shall rescind the exclusion order. The Department shall notify the child's school or facility when an exclusion order is rescinded.

(8) In situations where a child's vaccine history presents an unusual problem not covered by these rules, the Department shall use its judgment to make a final determination of the child's immunization status.

(9) Religious exemption from immunization requirement is allowed for one or more of the vaccines. Where a specific vaccine is not indicated for the religious exemption, it shall be interpreted that the exemption covers all of the vaccines required by these rules.

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

Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 12-2000, f. & cert. ef. 12-26-00; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from

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333-019-0035; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05

333-050-0060

Primary Review of Records

(1) At least annually the administrator will conduct a primary review of each child's record to determine the appropriate category of each child. This review shall be completed no later than five weeks (35 days) prior to the third Wednesday in February (usually the second Wednesday in January) unless otherwise approved in writing first by the Department and then by Health Services.

(2) The administrator shall categorize all children as follows:

(a) "Complete": This category applies to any child whose record indicates that he/she is fully immunized as specified by OAR 333-050-0050(2) or (5)(a);

(b) "Religious Exemption": This category applies to any child whose incomplete immunizations are covered by a religious exemption;

(c) "Medical Exemption": This category applies to any child who is susceptible because of a Medical Exemption Statement on file as specified by OAR 333-050-0050(5)(b);

(d) "Incomplete Immunizations": This category applies to any child whose record indicates that he/she is not fully immunized as specified in OAR 333-050-0050(2). This category only includes a child who is past due on his/her immunizations on or before the date the Primary Review Summary form is due at the Department;

(e) "Insufficient Information": This category applies to any child whose record does not have enough information to make a proper determination about the child's immunization status, including unsigned records, vaccine dates before day of birth, dates out of sequence, missing doses in the middle of a vaccine series, more than two doses of a vaccine series given in the same month and dates before vaccine licensure. This category does not apply to signed but undated records;

(f) "No Record": This category applies to any child with no record on file at the school/facility.

(g) "Children not to be counted": School age children also attending a facility should be counted by the school. Children enrolled in a school but physically attending another school should be counted by the school they physically attend. Children attending a preschool or Head Start program and another facility should be counted by the preschool or Head Start program. Children physically attending more than one child care facility or school should be counted by the facility or school where they attend the most hours.

(3)(a) Five weeks (35 days) prior to the third Wednesday in February, unless otherwise approved in writing first, by the Department and then by Health Services, the administrator shall provide to the Department for secondary review:

(A) Organized alphabetically within category, copies of records or a computer printout of the records of all children with incomplete immunizations or insufficient information, except where the Department has explicitly indicated to the administrator that the child is not yet due for his/her next immunization. In this case the record or computer printout should not be forwarded for review until the specified secondary review date;

(B) Copies of Exclusion Order for No Record for children who have no record on file at the school/facility. If mutually agreed upon by the affected school/facility and the Department, a computer-generated list from a currently Health Services approved system of children with no record is an acceptable alternative;

(C) Copies of records of children with a medical or immunity exemption, except those records which:

(i) Are specified in OAR 333-050-0050(5)(a)(D); or

(ii) Have been certified by the Department as having a permanent medical or immunity exemption and are otherwise complete with no further review required.

(D) A completed Primary Review Summary Form, which includes an alphabetical list, for each category, of children whose records are enclosed, specifying each child's name, current grade level, parent(s) name and current mailing address. Also listed alphabetically should be the names of the children for whom an Exclusion Order for No Record has been attached. If mutually agreed upon by the affected school/facility and the Department, a computer-generated list from a currently Health Services approved system of children with no record is an acceptable alternative;

(E) The administrator shall review the completed Primary Review Summary Form for mathematical accuracy and correct any errors before forwarding the completed Primary Review Summary Form to the Department.

(b) All copies of records provided to the Department for secondary review must contain at least the following: The child's name; date of birth; current grade level; parent(s) name and current mailing address; and evidence of immunization or exemption. A copy of the records or a data processing printout of the records must be used in place of the original record.

(A) The computer printouts and the results from computer generated immunization assessments (computer outputs) must have the prior approval of Health Services. To receive approval to be used for the primary review report in January, computer printouts and computer outputs must be received by Health Services no later than the last working day of November in the year prior to the year in which the primary review reports are due.

(B) The computer printout will be reviewed for essential data elements and the sequence of data elements. Health Services reserves the right to require proof of specific test data and approval by Health Services of the test results as calculated by computerized system.

(C) Provisional approval will be given to a computer tracking system after correct assessment has been confirmed for test data and essential data elements in required reports. Computer tracking systems with provisional approval will be reviewed after use during the annual review and exclusion cycle. Final approval will be given after any programming errors identified during the cycle have been corrected by the tracking system and additional printouts have been approved by Health Services.

(D) Health Services also reserves the right to withdraw computer system approval.

(E) When ORS 433.235 to 433.280 and/or these rules are amended, computer systems must be updated within 120 days. Health Services will then allow 60 days for review, needed changes and final approval. Computer outputs that are not in compliance will not be authorized for use during the annual review and exclusion cycle.

(4) Additional review cycles for incomplete/insufficient records with specific time-frames are allowable if mutually agreed upon in writing by the affected Department and schools/facilities. Exclusion dates shall be no less than 14 days from the date that the Exclusion Orders are mailed.

(5) It is the responsibility of the administrator to see that primary review of immunization records is accomplished according to these rules. All or part of the actual review may be delegated by mutual agreement of parties affected to a third party subject to this requirement.

Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0040; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05

333-050-0080

Exclusion

(1) The Department may use one of two Exclusion Orders depending upon the reason the child is found to be in non-compliance with ORS 433.267(1) and these rules:

(a) Exclusion Order for Incomplete Immunization or Insufficient Information:

(A) No later than 21 days from the date that the secondary review began, the Department shall send an appropriately completed and signed order of exclusion to the parent of each child with an incomplete or insufficient record. If a student is emancipated or has reached the age of majority, the Exclusion Order will be sent to him/her. The original copy shall be mailed first class to the parent of the child to be excluded. In the event that the Department has knowledge that the address of the parent, provided on the Primary Review Summary Form is incorrect, the Department shall use all reasonable means to notify the parent, including inquiries to the school/facility administrator and the local Post Office to establish the appropriate mailing address and sending home from the school a copy of the Exclusion Order with the child. After all reasonable means have been exhausted, the administrator shall exclude the child on the stated exclusion date. For all orders issued, one copy of the Exclusion Order shall be sent to the administrator and the Department shall retain one copy. The Department shall also retain copies of the records of children to be excluded until notification from the school/facility that such children are in compliance;

(B) The Department shall indicate on the Primary Review Summary Form, the status of each child whose records it reviewed and shall submit a copy of that form to the administrator along with copies of Exclusion Orders issued;

(C) The date of exclusion shall be 35 days from the date that the secondary review began. Additional exclusion cycles with specific time frames are allowable if mutually agreed upon in writing by the affected

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Department and school/facilities. Exclusion dates shall be set at no less than 14 days from the date that the Exclusion Orders are mailed;

(D) For children excluded for insufficient information and/or incomplete immunizations, compliance will be achieved by submitting to the administrator one of the statements allowed in OAR 333-050-0040(1)(d)(A) through (G);

(E) When the administrator verifies that the requested information has been provided per the Exclusion Order or that an appropriate medical and/or religious exemption has been provided, the child shall be in compliance with ORS 433.267(1) and these rules and qualified for school/facility attendance.

(F) On the specified date of exclusion, the administrator shall exclude from school/facility attendance all children so ordered by the Department until the requirements specified by the Department are verified by the administrator;

(G) The Department shall maintain copies of immunization records of children excluded and shall maintain contact with administrators regarding the status of such children.

(b) Exclusion Order for No Record:

(A) Where the parent does not comply with the requirements of the Exclusion Order for No Record (30 days or more have passed since initial attendance), the administrator shall enforce the exclusion date indicated on the presigned order and exclude the child.

(B) If the exclusion date used is the mandated date (third Wednesday of February), it is recommended that the administrator mail the parent a second copy of the Exclusion Order for No Record five weeks prior to exclusion day;

(C) Five weeks prior to the mandated exclusion date (third Wednesday in February), a copy of each presigned Exclusion Order for No Record for all students for whom no record exists at that time shall be sent to the Department. If mutually agreed upon by the school/facility and the Department, a computer generated list is an acceptable alternative;

(D) Exclusion may be avoided before the date specified on the Exclusion Order for No Record, by submission to the school of evidence of immunization(s) which includes at least one dose of each vaccine required for that grade, or a medical or religious exemption. If the Exclusion Order for No Record is enforced and the child is excluded, the child may re-enter school after presenting evidence of immunization(s) which includes at least one dose of each vaccine required for that grade, or a religious or medical or immunity exemption.

(2) If children whose records are not updated on the specified exclusion day arrive at their school/facility, the administrator shall make every effort to contact their parent by phone. The administrator shall place excluded children in a space away from the other children until their parent arrives to pick them up or until they are returned home by regular school district transportation.

(3) If the excluded children do not meet the requirements specified by the Department and do not return to school within four school days, it is the responsibility of the public school administrator, as proper authority, to notify the attendance supervisor of the unexcused absence. The attendance supervisor is required to proceed as required in ORS 339.080 and 339.090.

(4) Children who have been issued an Exclusion Order are not entitled to begin or continue in attendance in any school or facility in Oregon while the Exclusion Order is still in effect. Administrators who receive, or are otherwise made aware of the records of a child from another school/facility containing an Exclusion Order, which has not been cancelled, shall notify the parent(s) and immediately exclude the child until the requirements specified on the Exclusion Order are met and verified by the administrator.

(5) Twelve days after the mandatory February exclusion date, the administrator shall ensure that the Primary Review Summary Form returned from the Department is updated by appropriately marking the current status of each child as specified (including children listed as having no record); that the mathematics on the Primary Review Summary Form are accurate; and that a copy of the revised Primary Review Summary Form is forwarded to the Department on that day by first class mail or hand delivery. The administrator shall maintain a file copy of the updated Primary Review Summary Form.

(6) The Department shall review the updated Primary Review Summary Form for mathematical.

Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 23-1981, f. & ef. 11-17-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0050;

OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05

333-050-0090

Administrative Hearings for Review of Exclusion Orders

(1) Each Exclusion Order issued under OAR 333-050-0080 shall contain a notice informing the recipient of the opportunity to obtain an administrative hearing to review the order, pursuant to this rule.

(2) An administrative hearing provides a parent who believes the order to be in error the opportunity to obtain a review in person before the Department. An administrative hearing is not for the purpose of challenging the propriety or validity of the law or rules, nor is it for the purpose of supplementing an existing record. A record may be supplemented at any time without the necessity of an administrative hearing by presentation of the required documentation, pursuant to OAR 333-050-0080(1)(a)(D) and (b)(D).

(3) A request for an administrative hearing shall be made in writing by the parent and must be received by the Department no later than seven (7) days prior to the date set for the exclusion of the child. If not, the right to a hearing shall be deemed waived, unless proof is provided by the parent that the order was not received at least 11 days prior to the date set for the exclusion of the child or that other good cause for the delay exists as determined by the Department. A parent's request for hearing shall explain in what respect the parent believes the order to be in error. The purpose of this explanation by the parent is to identify the issues to be addressed at the hearing and to determine whether there is a possibility of resolving the matter without a hearing. If the explanation is not provided, the Department shall request the parent to, in advance of the hearing, provide the reason. Unless the reason is provided prior to the date of exclusion, the hearing shall be deemed waived.

(4) If prior to the hearing the order of exclusion is found by the Department to be in error, or if prior to the hearing, compliance is achieved pursuant to OAR 333-050-0080(1)(a)(D) and (b)(D), the Exclusion Order may be rescinded without a hearing and formal decision.

(5) The Department shall schedule a requested hearing to commence prior to the date set for exclusion of the child from the school/facility. If it is not possible to do so, the hearing shall be scheduled to commence as soon as possible after the date set for exclusion. When a hearing is scheduled for on or after the date of exclusion, the Department shall provide written notice to the school/facility that the exclusion of the child should be held in abeyance pending a notification of the decision following the hearing. Notification of the date, time, and place of the administrative hearing shall be provided to the parent, together with a copy of this OAR rule. Notice sent by first class mail will suffice.

(6) The chief administrator of the Department or his or her designee shall be the hearing officer.

(7) The parent or his/her authorized representative shall have the right to:

(a) Inspect in advance of the administrative hearing any documentary evidence leading to the Exclusion Order;

(b) Be represented by legal counsel;

(c) Question and confront witnesses; and

(d) Present evidence that is relevant to the issues in the hearing, either through witnesses or documentary evidence.

(8) The Department shall present the evidence which is the basis for the Exclusion Order at the hearing.

(9) The hearing may be continued for good cause and for reasonable periods as determined by the hearing officer.

(10) The decision arrived at shall:

(a) Be based solely on the evidence presented at the hearing and such matters as the hearing officer takes judicial notice of;

(b) Be written and in a form and substance which either affirms or rescinds the Exclusion Order and which states the reasons and identifies the evidence relied upon for such affirmation or rescission; and

(c) Be maintained as a record of the Department and a copy provided to the parent and to the administrator of the school/facility if the school/facility has been previously notified to hold the order of exclusion in abeyance pending the decision.

Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Stats. Implemented: ORS 433.273

Hist.: HD 2-1982, f. & ef. 2-4-82; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0051; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05

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333-050-0100

Follow Up

(1) In the event that any of the records are original documents the Department shall return such records to the administrator.

(2) The administrator shall be responsible for updating records each time the parents, health care practitioner, or an authorized representative of the Department provides evidence of immunization and/or a medical or religious exemption on each child.

(3) When a person is diagnosed as having one of the following school/facility restrictable diseases:

(a) Diphtheria, Measles, Pertussis, Rubella, or, in children's facilities only, Polio, the local health officer (or designee) may exclude from any school or facility in his/her jurisdiction, any student and/or employee who is susceptible to that disease.

(b) Varicella, the local health officer (or designee) may exclude from any school or facility in his/her jurisdiction, any student in a grade in which Varicella vaccine or disease history is required, who is susceptible to that disease.

(c) More information on disease restrictions for schools and facilities can be found in OAR 333-019-0010 and 333-019-0014.

(4) The administrator shall maintain a system to track susceptibles, in case of request by the local health department. The local health department may request that the list be sorted by disease susceptibility, classroom, grade, and/or school. The administrator will provide the sorted list within one calendar day in order to facilitate appropriate disease control measures.

(5) The Department and/or Health Services may conduct school/facility record validation surveys to insure compliance with ORS 433.235 through 433.280 and these rules.

(6) The Department and/or Health Services may require, if deemed necessary, that an additional review cycle be conducted on any school/facility records that were found in substantial non-compliance with these rules during the validation survey.

(7) Health Services may issue exclusion orders as needed for compliance with these rules during the validation survey process and when Health Services is the recognized Public Health Authority in the county.

Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Stats. Implemented:

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0055; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05

333-050-0130

Second Dose Measles in Post Secondary Educational Institutions

(1) Health Services shall require each post-secondary educational institution, except a community college and a private, proprietary vocational school, to require that each entering full-time student born on or after January 1, 1957, has two doses of measles vaccine prior to the student's second quarter or semester of enrollment on an Oregon campus, using procedures developed by the institution.

(2) The following records may be accepted as adequate proof of two doses of measles vaccine:

(a) Two doses (written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of each dose) on or after the first birthday, with a minimum of 28 days between the first and second dose; or

(b) No available month and year for the first dose but written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of the second dose in or after December, 1989.

(3) Each post-secondary educational institution under the jurisdiction of the law shall include a medical or immunity exemption and religious exemption

(4) Each post-secondary educational institution under the jurisdiction of the law shall develop procedures to implement and maintain this requirement.

(5) Health Services may conduct validation surveys to insure compliance.

(6) The State Health Officer shall have the right to suspend temporarily any portion of these requirements due to unforeseen circumstances. Health Services will notify in writing affected educational institutions. The notification will include the details of the suspension, not limited to: the suspended requirements, the anticipated duration of the suspension and policies to be implemented during the suspension.

(7) The local public health officer, after consultation with Health Services, may allow a student to attend an educational institution without

meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The Department shall provide a letter signed by the local health officer to the affected student stating that the vaccine requirement is being postponed. The letter must give guidance to the school about when vaccine is expected to be available.

(b) A photocopied form letter signed by the local health officer may be used by the Department when the shortage is expected to affect more than one student.

Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Stats. Implemented:

Hist.: HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0080; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05

333-050-0140

Second Dose Measles in Community Colleges

(1) Health Services shall require each community college to require that students involved in clinical experiences in allied health programs, practicum experiences in education and child care programs and membership on intercollegiate sports teams have two doses of measles vaccine prior to each student's participation. The requirement shall apply only to those students born on or after January 1, 1957, using procedures developed by the institutions.

(2) The following records may be accepted as adequate proof of two doses of measles vaccine:

(a) Two doses (written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of each dose) on or after the first birthday, with a minimum of 28 days between first dose and second dose; or

(b) No available month and year for the first dose but written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of the second dose in or after December, 1989.

(3) Each community college under the jurisdiction of the law shall include a medical or immunity exemption and religious exemption.

(4) Each community college shall develop procedures to implement and maintain this requirement.

(5) Health Services may conduct validation surveys to insure compliance.

(6) The State Health Officer shall have the right to suspend temporarily any portion of these requirements due to unforeseen circumstances. Health Services will notify in writing affected educational institutions. The notification will include the details of the suspension, not limited to: the suspended requirements, the anticipated duration of the suspension and policies to be implemented during the suspension.

(7) The local public health officer, after consultation with Health Services, may allow a student to attend an educational institution without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The Department shall provide a letter signed by the local health officer to the affected student stating that the vaccine requirement is being postponed. The letter must give guidance to the school about when vaccine is expected to be available.

(b) A photocopied form letter signed by the local health officer may be used by the Department when the shortage is expected to affect more than one student.

Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Stats. Implemented:

Hist.: HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0090; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05

333-050-0141

Effective Date

The effective date for rules 333-050-0010, 333-050-0020, 333-050-0030, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0080, 333-050-0090, 333-050-0100, 333-050-0130, 333-050-0140 and 333-050-0141 shall be December 13, 2002.

Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.280

Stats. Implemented: ORS 433.273

Hist.: PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05

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

Adm. Order No.: SPD 32-2004

Filed with Sec. of State: 10-25-2004

Certified to be Effective: 10-25-04

Notice Publication Date: 10-1-04

Rules Amended: 411-340-0110, 411-340-0130, 411-340-0150

Subject: Chapter 411, Division 340, Support Services for Adults with Developmental Disabilities have been permanently amended with the following changes:

(a) 411-340-0110: - Per modifications to the Staley lawsuit settlement agreement, this amendment changes the year from 2005 to 2009 in 411-340-0110(2)(a); changes the year from 2005 to 2009 in 411-340-0110(2)(a)(B), and changes the year from 2005 to 2007 in 411-340-0110(2)(a)(D).

(b) 411-340-0130: Makes permanent Temporary Rule 411-340-0130(4)(f) to include provision for the enrollment of Support Brokerages for people transferring to the SPD Support Service Waiver from the SPD Aging and People with Physical Disability waiver.

(c) 411-340-0150: Provides for consistency with Chapter 411, Division 320, CDDP rule. This change allows for an additional qualification to Personal Agent and adds an alternative plan to meet qualifications for Personal Agent.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-340-0110

Standards for Support Service Brokerage Entry and Exit

(1) Providing basic information. The Support Services Brokerage must make accurate, up-to-date information about the program available to individuals referred for services. This information must include:

(a) A declaration of program philosophy;

(b) A brief description of the services provided by the program, including typical timelines for activities;

(c) A description of processes involved in using the services, including application and referral, assessment, planning, and evaluation;

(d) A declaration of Support Service Brokerage employee responsibilities as mandatory abuse reporters;

(e) A brief description of individual responsibilities for use of public funds;

(f) An explanation of individual rights, including rights to:

(A) Choose a Brokerage among Department-contracted Brokerages in an individual's county of residence;

(B) Choose a Personal Agent among those available in the selected Brokerage;

(C) Select providers among those qualified according to OAR 411-340-0160, 411-340-0170, and 411-340-0180 to provide supports authorized through the ISP;

(D) Direct the services of support providers; and

(E) Raise and resolve concerns about Brokerage services, including specific rights to notification and hearing for Medicaid recipients according to OAR 411-340-0060(3) when services covered under Medicaid are denied, terminated, suspended, or reduced.

(g) Indication that additional information about the Support Service Brokerage is available on request. That information must include, but is not limited to:

(A) A description of the Support Service Brokerage's organizational structure;

(B) A description of any contractual relationships the Support Service Brokerage has in place or can establish to accomplish the Support Service Brokerage functions required by this rule; and

(C) A description of the relationship between the Support Services Brokerage and its Policy Oversight Group.

(h) The Brokerage must make information required in OAR 411-340-0110(1)(a) through (g) available using language, format, and presentation methods appropriate for effective communication according to individuals' needs and abilities.

(2) Entry into Support Service Brokerage services.

(a) An individual must enter Support Service Brokerage services within 90 calendar days of the date the CDDP has completed processes of eligibility determination, selection of Brokerage, application, and referral except during the period of statewide Support Service Brokerage develop-

ment July 1, 2001 through June 30, 2009. During that period, and unless the Department has implemented statewide changes in the order of group enrollments according to OAR 411-340-0110(2)(a)(E), individuals who have been determined eligible, selected the Brokerage, and completed CDDP processes for application and referral to the Brokerage will enter in the following order:

(A) First, individuals living in the Brokerage's area of service and receiving, as of the date the Brokerage is certified to provide services, only Self-Directed Support services regulated by 309-041-1110 through 1170, or a combination of Self-Directed Support services and Employment and Alternative to Employment services regulated by OAR chapter 411, division 345.

(B) Second, and continuing through June 30, 2009, individuals who are not receiving any Department-funded developmental disability services as of the date the Brokerage is certified to provide services, entering according to priorities and characteristics described in written Department guidelines, and in order of date of formal application made during the CDDP referral process;

(C) Third, beginning while enrollment of individuals per OAR 411-340-0110(2)(a)(B) is still in progress and continuing through June 30, 2005, individuals receiving only Employment and Alternative to Employment services, regulated by OAR chapter 411, division 345 in the Brokerage's area of service, as of the date the Brokerage is certified to provide services; and

(D) Fourth, beginning while enrollment of individuals per OAR 411-340-0110(2)(a)(B) and 411-340-0110(2)(a)(C) is still in progress and continuing through June 30, 2007, individuals receiving Semi-Independent Living Services regulated by 309-041-015.

(E) Notwithstanding the order of group enrollments indicated in OAR 411-340-0110(2)(a)(A) through (D), the Department may implement changes in the order of enrollment on a statewide basis when the Department has determined that such changes are prudent and necessary for the continued development and operation of Support Services Brokerages.

(b) The Support Services Brokerage must not accept individuals for entry beyond the total number of individuals specified in its current contract with the Department.

(3) Exit from a Support Services Brokerage. An individual must exit a Support Services Brokerage:

(a) At the written request of the individual or the individual's legal representative to end the service relationship;

(b) No less than thirty (30) days after the Support Service Brokerage has served written notice of intent to terminate services, when the individual either cannot be located or has not responded to repeated attempts by Support Service Brokerage staff to complete plan development and monitoring activities and, further, does not respond to the notice of intent to terminate; or

(c) Whenever the individual's emergent status exceeds two hundred seventy (270) days in twelve (12) consecutive months.

(d) Each Support Service Brokerage must have policies and procedures for notifying the CDDP of an individual's county of residence when that individual plans to exit, or exits, Brokerage services. Notification method, timelines, and content must be based on agreements between the Brokerage and CDDP's of each county in which the Brokerage provides services.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007, 417.340 - 417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1850, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04

411-340-0130

Using Support Services Funds to Purchase Supports

(1) Approved written plan required. A Support Services Brokerage may use support services funds to assist individuals to purchase supports in accordance with an ISP which:

(a) Identifies supports that are necessary for an individual to live in his or her own home or in the family home;

(b) Specifies cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual;

(c) Projects the amount of support services funds, if any, which may be required to purchase the remainder of necessary supports and which are within the Basic Benefit limits, unless authorized for supplement to the Basic Benefit according to OAR 411-340-0130(4)(a) through (e); and

(d) Has been approved for implementation by the CDDP Support Specialist.

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(2) Assistance is a social benefit. Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits as defined in OAR 411-340-0020(63).

(3) Limits of financial assistance. Assistance with purchase of individual supports in any Plan Year as defined in OAR 411-340-0020(50) is limited to the Basic Benefit as defined in OAR 411-340-0020(6) unless individual circumstances meet the conditions of the exceptions indicated in OAR 411-340-0130(4)(a) through (e).

(a) Basic Benefit distribution for full Plan Year. Individuals must have access throughout the Plan Year to the total annual amount of support services funds determined necessary to implement an approved ISP, even if there is a delay in implementation of the plan, unless otherwise agreed to in writing by the individual or the individual's legal representative.

(b) Basic Benefit distribution adjustments. The Department may require that annual Basic Benefit amounts be calculated and applied on a monthly basis when an individual's eligibility for Medicaid changes during a Plan Year or when, for any reason, an individual's ISP is developed and written to be in effect for less than twelve months.

(A) In the case of an individual whose Medicaid eligibility changes, the monthly Basic Benefit limit will be one-twelfth of the annual Basic Benefit amount for which the individual would be eligible should the change in Medicaid status remain in effect for twelve calendar months. The monthly Basic Benefit limit will be applied each month for the remainder of the Plan Year in which the individual's change in Medicaid eligibility occurred, from the date the change occurred.

(B) In the case of an individual with an ISP developed for a partial Plan Year, the monthly Basic Benefit limit will be one-twelfth of the annual Basic Benefit amount for which the individual would be eligible should the individual's ISP be in effect for twelve months. The monthly Basic Benefit limit will be applied each month during which the ISP of less than 12 months' duration is in effect.

(c) Individual plan costs. Estimates of individual plan costs must be based on written guidelines for costs of frequently used services published and updated periodically by the Department.

(A) Department guidelines notwithstanding, final costs must not exceed local usual and customary charges for these services as evidenced by the Brokerage's own documented survey.

(B) The Support Service Brokerage must establish a process for review and approval of all budgets based on estimates exceeding published guidelines and must monitor the approved individual plans involved for continued cost effectiveness.

(4) Exceptions to Basic Benefit financial limits. Exceptions to the Basic Benefit annual Support Services fund limit may be only as follows:

(a) Extraordinary long-term need. Individuals with extraordinary long-term need as demonstrated by a score of seventy (70) or greater on the Basic Supplement Criteria may have access to more than the Basic Benefit Support Services fund limit in order to purchase necessary supports.

(A) For Medicaid recipients choosing services under the Support Services waiver, the supplement to the Basic Benefit must result in a Plan Year cost which is less than the minimum allowable Plan Year cost for Comprehensive In-Home Support Services in the same biennium; and

(B) For individuals who are not Medicaid recipients choosing services under the Support Services waiver, the supplement to the Basic Benefit must result in a Plan Year cost which is less than the state's General Fund contribution to the minimum allowable Plan Year cost for in-home Comprehensive Services in the same biennium, calculated according to the Medicaid match rate current at the beginning of the Plan Year and adjusted annually to correspond to changes in the Medicaid match rates; and

(C) The Brokerage Director, or a designee from Brokerage management and administration, must administer the Basic Supplement Criteria only after receiving Department-approved training. The Brokerage Director or designee must score Basic Supplement Criteria according to written and verbal instruction received from the Department.

(D) The trained Brokerage Director or designee must administer the Basic Supplement Criteria within 30 calendar days of the written request of the individual or the individual's legal representative.

(E) The Brokerage Director or designee must send written notice of findings regarding eligibility for a supplement to the Basic Benefit to the individual and the individual's legal representative within 45 calendar days of the written request for a supplement. This written notice must include:

(i) An offer for the individual and individual's legal representative to discuss the findings in person with the Director and with the individual's Personal Agent in attendance if desired; and

(ii) A notice of appeal processes under 411-340-0060.

(F) Annual ISP reviews for recipients of the supplement must include a review of circumstances and resources to confirm continued need.

(b) Transfers from Employment and Alternative to Employment, Semi-Independent Living, and Self-Directed Support services according to Department-designated schedule of group enrollments under OAR 411-340-0110(2). Support service fund expenditures for individuals enrolled in these services prior to the designated date of group enrollment in Support Services Brokerages may, for a limited amount of time, exceed the Basic Benefit financial limits. To qualify, individuals must be enrolled in Employment and Alternative to Employment services regulated by OAR Chapter 411, Division 345, enrolled in Semi-Independent Living Services regulated by OAR 309-041-0015 through 0024, or receive Self-Directed Support services regulated by OAR 309-041-1110 through 1170 during the month prior to enrollment in a Support Services Brokerage and the Department's annual cost of this previous service must exceed the financial assistance available through the Basic Benefit.

(A) Each qualified individual transferring from Employment and Alternative to Employment Services November 1, 2001, through June 30, 2002, may have access to support services funds in an amount equal to the Department's previous cost for the individual in these services, as negotiated according to Department guidelines, for no more than three hundred sixty-five (365) calendar days from date of enrollment in the Support Services Brokerage;

(B) Each qualified individual transferring from Employment and Alternative to Employment Services beginning July 1, 2003, and who does not have any other Department-paid residential support services prior to that date, may have access to support services funds in an amount each month equal to the Department's previous Employment and Alternative to Employment monthly costs for the individual, as negotiated according to Department guidelines:

(i) For three hundred sixty-five (365) days, if he or she is a Medicaid recipient eligible for waiver services; or

(ii) For one hundred eighty (180) days, if he or she is not a Medicaid recipient eligible for waiver services.

(C) Each qualified individual transferring from Semi-Independent Living services may have access to support services funds in an amount equal to the Department's previous cost for the individual in these services, as negotiated according to Department guidelines, for no more than three hundred sixty-five (365) calendar days from date of enrollment in the Support Services Brokerage; and

(D) Each qualified individual transferring from Self-Directed Support services November 1, 2001, through June 30, 2002, may have access to support services funds in an amount equal to financial assistance authorized by his or her current Self-Directed Support Plan for no more than three hundred sixty-five (365) calendar days from date of enrollment in the Brokerage when the individual is a Medicaid recipient choosing to receive Support Service waiver services and for no more than ninety (90) calendar days from date of enrollment in the Brokerage when the individual is not Medicaid-eligible or does not otherwise receive Medicaid benefits.

(E) Upon individual enrollment in the Brokerage, the Brokerage must fully inform the individual and the individual's legal representative of the time limit for the supplement to the Basic Benefit.

(F) The Support Services Brokerage must complete assessment, identify resources, and develop a new individualized plan and budget during this period with a goal of reducing Support Services fund annual costs to less than or equal to financial assistance available in the Basic Benefit.

(G) At any point during the individual's first year of enrollment in the Brokerage that annual plan costs are successfully reduced to a cost less than or equal to that available in the Basic Benefit, the individual's new Plan Year will begin on the date the revised ISP is authorized for implementation by the individual's CDDP Support Specialist.

(c) Prior-authorized crisis/diversion services. Individuals who have been assessed as in need of, and meeting criteria for, crisis/diversion services by the CDDP of the individual's county of residence according to OAR 411-320-0160 may receive short-term assistance with purchase of support in excess of the Basic Benefit. Use of crisis/diversion services may only be authorized by the CDDP of the individual's county of residence or by the Regional Crisis Program responsible for the individual's county of residence.

(A) Funds associated with crisis/diversion services may be used to pay the difference in cost between the authorized ISP and budget in place at the time the individual is determined eligible for crisis/diversion services, and the supports authorized by either the CDDP of the individual's county of residence, or the Regional Crisis Program responsible for cri-

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sis/diversion services in the individual's county of residence, depending on the source of crisis/diversion funds, to meet the short-term need.

(B) Although costs for crisis/diversion services may bring the individual's total Plan Year cost temporarily at or above the minimum allowable Plan Year cost of in-home Comprehensive Services in the same biennium, in no case may the individual's costs exceed the state's current ICF/MR daily cost per individual nor may Plan Year expenses at or above the minimum for Comprehensive Services make the individual eligible for Comprehensive Services.

(i) Individuals placed in emergent status due to receiving crisis/diversion services authorized and provided according to OAR 411-320-0160 may remain enrolled in, and receive Support Services from, the Support Service Brokerage while both crisis/diversion services and Support Services are required to stabilize and maintain the individual at home or in the family home. In no case, however, may the individual remain enrolled in the Support Service Brokerage under emergent status for more than 270 consecutive days in any 12-month period.

(ii) The individual's Personal Agent must participate with CDDP or regional crisis/diversion staff in efforts to stabilize supports and return costs to the Basic Benefit or approved supplement levels, documenting reviews of effectiveness at least every ninety (90) days while the individual is receiving crisis/diversion services.

(d) Conversions from other Department-regulated services. Individuals whose source of support funds are, in whole or in part, an individual-specific redirection of funds through Department contract from a Department-regulated residential, work, or day habilitation service to support services funds, or to Comprehensive In-Home Support funds regulated by OAR Chapter 411, Division 330 prior to enrollment in a Support Service Brokerage, may have access to the amount specified in the Department contract as available for the individual's use. This provision is only applicable when each transition is separate and specific to the individual and the services being converted are not subject to statewide service transitions described in OAR 411-340-0130(4)(b).

(A) Individual Plan Year costs must always be less than the minimum allowable Plan Year cost for in-home Comprehensive Services in the same biennium; and

(B) The Brokerage must review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and must make budget reductions when allowed by the ISP.

(e) Funds designated for services to individuals eligible for, and at imminent risk of, civil commitment under ORS 427. Individuals whose support funds were specifically assigned through Department contract to Self-Directed Support Services prior to the date designated by the Department for transfer of the individual from Self-Directed Support services to a Support Service Brokerage may have access to the amount specified in the Department contract as available for the individual's use.

(A) Individual Plan Year costs must always be less than the minimum allowable Plan Year cost for in-home Comprehensive Services in the same biennium; and

(B) The Brokerage must review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and must make budget reductions when allowed by the ISP.

(f) Individuals transferring from Department waiver services for the Aged and Adults with Physical Disabilities. Individuals transferring from the Department's Home and Community-Based waiver services for the Aged and Adults with Physical Disabilities who have been determined ineligible for those waiver service funds, in accordance with OAR 411-015-0015 (4) (c) will have limited access to support service funds, as described in OAR 411, Division 340. The amount of support service funds available will be equal to the Department's previous service costs for the individual for no more than three hundred and sixty-five (365) calendar days. The three hundred and sixty-five (365) calendar days begins the date the individual starts receiving support services exclusively through a Support Service Brokerage.

(5) Amount, method and schedule of payment.

(a) The Brokerage must disburse, or arrange for disbursement of, support services funds to qualified providers on behalf of individuals up to the amount agreed upon in an ISP that has been signed by the individual or the individual's legal representative and approved for implementation by the CDDP Support Specialist. The Brokerage is specifically prohibited from reimbursement of individuals or individuals' families for expenses related to services and from advancing funds to individuals or individuals' families to obtain services.

(b) The method and schedule of payment must be specified in written agreements between Brokerage and the individual or individual's legal representative.

(6) Types of supports purchased. Supports eligible for purchase with support services funds are:

(a) Chore services as defined in OAR 411-340-0020(11);

(b) Community inclusion supports as defined in OAR 411-340-0020(13);

(c) Community living supports as defined in OAR 411-340-0020(14);

(d) Environmental accessibility adaptations as defined in OAR 411-340-0020(22);

(e) Family training as defined in OAR 411-340-0020(26);

(f) Homemaker services as defined in OAR 411-340-0020(32);

(g) Occupational therapy services as defined in OAR 411-340-0020(45);

(h) Personal emergency response systems as defined in OAR 411-340-0020(47);

(i) Physical therapy services as defined in OAR 411-340-0020(49);

(j) Respite care as defined in OAR 411-340-0020(59);

(k) Special diets as defined in OAR 411-340-0020(64);

(l) Specialized medical equipment and supplies as defined in OAR 411-340-0020(65) as well as the following provisions:

(A) When specialized medical equipment and supplies are primarily and customarily used to serve a medical purpose, then purchase, rental, or repair with support services funds must be limited to the types of equipment and supplies permitted under the State Medicaid Plan and, specifically, those that are not excluded under OAR 410-122-0080. Support services funds may be used to purchase more of an item than the number allowed under the State Medicaid Plan after the limits specified in the State Medicaid Plan have been reached, requests for purchases have been denied by Medicaid State Plan or private insurance, and the denial has been upheld in applicable Medicaid contested case hearing or private insurance benefit appeals process; and

(B) Devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase his or her abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which he or she lives, may be purchased with support services funds when the individual's developmental disability otherwise prevents or limits the individual's independence in these areas. Equipment and supplies that can be purchased for this purpose must be of direct benefit to the individual and include:

(i) Adaptive equipment for eating, (i.e., utensils, trays, cups, bowls that are specially designed to assist an individual to feed him/herself);

(ii) Adaptive beds;

(iii) Positioning devices;

(iv) Specially designed clothes to meet the unique needs of the individual with the disability, (e.g., clothes designed to prevent access by the individual to the stoma, etc.);

(v) Assistive technology items;

(vi) Computer software used by the individual to express needs, control supports, plan and budget supports;

(vii) Augmentative communication devices;

(viii) Environmental adaptations to control lights, heat, stove, etc.; or
(ix) Sensory stimulation equipment and supplies that help an individual calm, provide appropriate activity, or safely channel an obsession (e.g., vestibular swing, weighted blanket, tactile supplies like creams and lotions);

(m) Specialized supports as defined in OAR 411-340-0020(66);

(n) Speech and language therapy services as defined in OAR 411-340-0020(67);

(o) Supported employment as defined in OAR 411-340-0020(69); and

(p) Transportation as defined in OAR 411-340-0020(77).

(7) Conditions of purchase. The Brokerage must arrange for supports purchased with support services funds to be provided:

(a) In settings and under contractual conditions that allow the individual to freely redirect support services funds to purchase supports and services from another qualified provider;

(A) Individuals who choose to combine support services funds to purchase group services must receive written instruction about the limits and conditions of such arrangements;

(B) Combined support services funds cannot be used to purchase existing, or create new, Comprehensive Services;

(C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements and timekeeping for staff working with more than one individual;

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(D) Combined arrangements for community inclusion or supported employment services that result in creation of a provider organization as defined in OAR 411-340-0020(55) must be certified according to OAR Chapter 411, Division 340; and

(E) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 411-340-0020(51) and where behavior intervention is not undertaken unless the behavior:

- (A) Represents a risk to health and safety of the individual or others;
- (B) Is likely to continue to become more serious over time;
- (C) Interferes with community participation;
- (D) Results in damage to property; or
- (E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care, training, and supervision;

(d) In accordance with applicable state or local building codes, in the case of environmental accessibility adaptations to the home;

(e) In accordance with Oregon Board of Nursing Administrative Rules 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities.

(8) Independent Provider, Provider Organization, General Business Provider agreements and responsibilities. When Support Service funds are used to purchase care, training, supervision or other personal assistance for individuals, the Brokerage must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse as defined in OAR 411-340-0020(1);

(b) Responsibility to immediately notify the person or persons, if any, specified by the individual or individual's legal representative of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual care, training, or supervision and which may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) Support Service fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program; and

(B) The provider must bill all third party resources before using Support Service funds unless another arrangement is agreed upon by the Brokerage and described in the ISP;

(d) The provisions of OAR 411-340-0130(9) regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(9) Sanctions for Independent Providers, Provider Organizations, and General Business Providers.

(a) Sanction(s) may be imposed on a provider when the Brokerage determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with support services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Had his/her professional license suspended, revoked, or otherwise limited, or surrendered his/her license;

(D) Failed to safely and adequately provide the services authorized;

(E) Had an allegation of abuse or neglect substantiated against him or her;

(F) Failed to cooperate with any Department or Brokerage investigation, or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Not adhered to the provisions of OAR 411-340-0130(8) or OAR 411-340-0140; or

(K) Been suspended or terminated as a provider by another agency within the Department.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with support services funds;

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the Brokerage or Department, as applicable;

(C) The Brokerage may withhold payments to the provider.

(c) If the Brokerage makes a decision to sanction a provider, the Brokerage must notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 days of the date of the notice. The provider must appeal this action separately from any appeal of audit findings and overpayments.

(d) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Administrator of the Department or designee.

(e) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days of the date the sanction notice was mailed to the provider.

(f) At the discretion of the Department, providers who have previously been terminated or suspended by any Department agency may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007, 417.340 - 417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1870, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 10-2004(Temp), f. & cert. ef. 4-30-04 thru 10-25-04; SPD 32-2004, f. & cert. ef. 10-25-04

411-340-0150 Standards for Support Services Brokerage Administration and Operations

(1) Individual and family leadership. The Brokerage must develop and implement procedures for incorporating the direction, guidance and advice of individuals and family members of individuals in the administration of the organization.

(a) The Support Services Brokerage must establish and utilize a Policy Oversight Group, of which the membership majority must be individuals with developmental disabilities and family members of individuals with developmental disabilities.

(b) Brokerage procedures must be developed and implemented to assure the policy oversight group has the maximum authority that may be legally assigned or delegated over important program operational decisions, including such areas as program policy development, program planning and goal setting, budgeting and resource allocation, selection of key personnel, program evaluation and quality assurance, grievance or appeal resolution.

(c) If the Policy Oversight Group is not also the governing body of the Support Services Brokerage, then the Brokerage must develop and implement a written procedure that describes specific steps of appeal or remediation to resolve conflicts between the Policy Oversight Group and the governing body of the Brokerage.

(d) A Policy Oversight Group must develop and implement operating policies and procedures.

(2) Full-Time Brokerage Director required. The Support Services Brokerage must employ a full-time Director who is responsible for daily Brokerage operations in compliance with these rules and has authority to make budget, staffing, policy, and procedural decisions for the Brokerage.

(3) Director qualifications. In addition to general staff qualifications of OAR 411-340-0070(1) through (2), the Brokerage Director must have a minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health or a related field; or six years of experience, including supervision, in the field of developmental disabilities or a social service/mental health field.

(4) Fiscal Intermediary requirements.

(a) Individuals or entities providing fiscal intermediary services must:

(A) Demonstrate a practical understanding of laws, rules and conditions that accompany the use of public resources;

(B) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;

(C) Establish and meet the time lines for payments that meet individuals' needs;

(D) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;

(E) Generate service, management, and statistical information and reports required by the Brokerage Director and Policy Oversight Group to effectively manage the Brokerage and by individuals to effectively manage supports;

(F) Maintain flexibility to adapt to changing circumstances of individuals; and

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(G) Provide training and technical assistance to individuals as required and specified in ISPs;

(b) Contractor and employee qualifications. The Support Brokerage must obtain and maintain written evidence that:

(A) Contractors providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities; and

(B) Employees providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities prior to hire or that the Brokerage has provided requisite education, training and experience.

(5) Personal Agent qualifications. Each Personal Agent must have:

(a) An undergraduate degree in a human services field and at least one year experience in the area of developmental disabilities; or

(b) Five years of equivalent training and work experience related to developmental disabilities.

(c) Knowledge of the public service system for developmental disability services in Oregon.

(A) Alternative plan to meet qualifications. Persons who do not meet the minimum qualifications set forth in 411-340-0150(5)(b)(A) may perform those functions only with prior approval of a variance by the Department. Prior to employment of an individual not meeting minimum qualifications for Personal Agent, the Brokerage must submit a written variance request to the Department. The request will include:

(i) An acceptable rationale for the need to employ an individual who does not meet the qualifications; and

(ii) A proposed alternative plan for education and training to correct the deficiencies;

(iii) The proposal must specify activities, timelines and responsibility for costs incurred in completing the plan.

(B) A person who fails to complete a plan for education and training to correct deficiencies may not fulfill the requirements for the qualifications.

(6) Separation of duties. When a CDDP operates a Brokerage:

(a) Support Specialist and Personal Agent activities, responsibilities, and costs must be clearly separated and delineated in individual files, staff job descriptions, and CDDP financial and service reports; and

(b) The individual's Personal Agent must not also be the individual's Support Specialist.

(7) Personal Agent training. The Brokerage must provide or arrange for Personal Agents to receive training needed to provide or arrange for Brokerage services, including, but not limited to principles of self-determination, person-centered planning processes, identification and use of alternative support resources, fiscal intermediary functions, basic employer/employee roles and responsibilities, developing new resources, major public health and welfare benefits, constructing and adjusting individualized support budgets, and assisting individuals to judge and improve quality of personal supports.

(8) Individual record requirements. The Brokerage must maintain current, up-to-date records for each individual served and must make these records available on request for Department review. These records must include, at minimum:

(a) Application and eligibility Information received from the referring CDDP;

(b) An easily-accessed summary of basic information, including individual name, family name (if applicable), individual's legal guardian or conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, individual financial resource information, and Plan Year anniversary date;

(c) Documents related to determining eligibility for Brokerage services and the amount of support services funds available to the individual, including Basic Supplement Criteria if applicable;

(d) Records related to receipt and disbursement of funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-340-0160 through 0180;

(e) Documentation, signed by the individual or individual's legal representative, that the individual or individual's legal representative has been informed of responsibilities associated with the use of support services funds;

(f) Incident reports;

(g) Assessments used to determine supports required, preferences, and resources;

(h) Individual Support Plan and reviews;

(i) Personal Agent correspondence and notes related to resource development and plan outcomes; and

(j) Information about individual satisfaction with personal supports and the Brokerage services.

(9) Special records requirements for Support Services fund expenditures. The Brokerage must develop and implement written policies and procedures concerning use of support services funds. These policies and procedures must include, but may not be limited to:

(a) Minimum acceptable records of expenditures;

(A) Itemized invoices and receipts to record purchase of any single item which costs \$25.00 or more;

(B) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(C) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals; and

(D) Pay records, including timesheets signed by both employee and employer, to record employee services.

(b) Procedures for confirming the receipt, and securing the use of, specialized medical equipment and environmental accessibility adaptations;

(A) When equipment is obtained for the exclusive use of an individual, the Support Services Brokerage must record the purpose, final cost, and date of receipt;

(B) The Brokerage must secure use of equipment or furnishings costing more than \$500 through a written agreement between the Brokerage and the individual or individual's legal representative which specifies the time period the item is to be available to the individual and the responsibilities of all parties should the item be lost, damaged, or sold within that time period;

(C) The Brokerage must ensure that projects for environmental accessibility adaptations involving renovation or new construction in an individual's home costing \$5000 or more per single instance or cumulatively over several modifications:

(i) Are approved by the Department before work begins and before final payment is made;

(ii) Are completed or supervised by a contractor licensed and bonded in the State of Oregon; and

(iii) That steps are taken as prescribed by the Department for protection of the Department's interest through liens or other legally available means; and

(D) The Brokerage must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure.

(c) Return of purchased goods. Any goods purchased with support services funds that are not used according to an ISP or according to an agreement securing the State's use may be immediately recovered. Failure to furnish written documentation upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Centers for Medicare and Medicaid Services or their authorized representatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

(10) Quality Assurance.

(a) The Brokerage Policy Oversight Group must develop a Quality Assurance Plan and review this plan at least twice a year. The plan must include a written statement of values, organizational outcomes, activities, and measures of progress that:

(A) Uses information from a broad range of consumer, advocate, professional and other sources to determine community support needs and preferences;

(B) Involves individuals in ongoing evaluation of the quality of their personal supports; and

(C) Monitors:

(i) Customer satisfaction with the services of the Brokerage and with individual plans in areas such as individual access to supports, sustaining important personal relationships, flexible and unique support strategies, individual choice and control over supports, responsiveness of the Brokerage to changing needs and preferences of individuals; and

(ii) Service outcomes in areas such as achievement of personal goals and effective use of resources.

(b) The Brokerage must participate in statewide evaluation, quality assurance, and regulation activities as directed by the Department.

(11) Brokerage referral to affiliated entities.

(a) When a Brokerage is part of, or otherwise directly affiliated with, an entity that also provides services an individual may purchase with private or support services funds, Brokerage staff must not refer, recommend

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or otherwise support the individual to utilize this entity to provide services unless:

(A) The Brokerage conducts a review of provider options which demonstrates that the entity's services will be cost-effective and best-suited to provide those services determined by the individual to be the most effective and desirable for meeting needs and circumstances represented in the ISP; and

(B) The entity is freely selected by the individual and is the clear choice by the individual among all available alternatives.

(b) The Brokerage must develop and implement a policy that addresses individual selection of an entity of which the Brokerage is a part or otherwise directly affiliated to provide services purchased with private or support services funds. This policy must address, at minimum:

(A) Disclosure of the relationship between the Brokerage and the potential service provider;

(B) Provision of information about all other potential service providers to the individual without bias;

(C) A process for arriving at the option for selecting the service provider;

(D) Verification of the fact that the service providers were freely chosen among all alternatives;

(E) Collection and review of data on services, purchased by an individual enrolled in the Brokerage, by an entity of which the Brokerage is a part or otherwise directly affiliated; and

(F) Training of Personal Agents and individuals in issues related to selection of service providers.

(12) General operating policies and practices. The Support Services Brokerage must develop and implement such written statements of policy and procedure in addition to those specifically required by this rule as are necessary and useful to enable the agency to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007, 417.340 - 417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1890, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04

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Department of Justice
Chapter 137

Adm. Order No.: DOJ 13-2004(Temp)

Filed with Sec. of State: 11-1-2004

Certified to be Effective: 11-1-04 thru 1-31-05

Notice Publication Date:

Rules Amended: 137-008-0010

Subject: In part, the rule establishes the prices of Department publications. Amendment is necessary to reflect changing the name of the Attorney General's Model Public Contract Rules Manual to "Attorney General's Public Contracts Manual," and to reflect an increase in the price of the Manual.

Rules Coordinator: Carol Riches—(503) 378-6313

137-008-0010

Fees for Public Records and Publications

(1)(a) The Department of Justice may charge a fee reasonably calculated to reimburse the department for costs of providing and conveying copies of public records. The department shall charge 25¢ per page for the first 20 pages and 15¢ per page thereafter to recover the costs of photocopying and normal and reasonable staff time to locate, separate, photocopy and return document(s) to file and to prepare/mail public record(s) to requestors. If, for operational or other reasons, the Department uses the services of an outside facility or contractor to photocopy requested records, the department shall charge the actual costs incurred.

(b) "Page" refers to the number of copies produced, either 8 1/2 x 11 or 8 1/2 x 14. Staff will not reduce the copy size or otherwise manipulate records in order to fit additional records on a page, unless staff concludes that it would be the most effective use of their time. Consistent with ORS 192.240, all copies will be double-sided. A double-sided copy consists of two pages. Because of the increased staff time involved in double-sided copying, there is no reduction in the per page fee.

(c) "Normal and reasonable" staff time is 10 minutes or less per request.

(2) Additional charges for staff time may be made when responding to record requests that require more than the "normal and reasonable" time

for responding to routine record requests. Staff time shall be charged at the department's hourly billing rate, by position, as follows:

(a) Assistant Attorney General; \$98/hr;

(b) Alternative Dispute Resolution Coordinator; \$80/hr;

(c) Investigator; \$76/hr;

(d) Paralegal; \$69/hr;

(e) Law Clerk; \$46/hr;

(f) General Clerical; \$44/hr;

(g) These charges are for staff time in excess of 10 minutes spent locating, compiling, sorting and reviewing records to prepare them for inspection, as well as all time required to segregate or redact exempt information or to supervise inspection of documents.

(3) The Department shall estimate the costs of making records available for inspection or providing copies of records to requestors. All estimated fees and charges must be paid before public records will be made available for inspection or copies provided.

(4) The Department may charge a fee reasonably calculated to reimburse the department for costs of department publications, Oregon District Attorneys Association publications prepared by the Department and other Department materials intended for distribution. A listing of such available publications and materials shall be maintained by the Department librarian. The Department shall charge the following for its regular publications:

(a) Attorney General's Public Law Conference Papers; \$65;

(b) Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the APA; \$40;

(c) Attorney General's Public Contracts Manual; \$65;

(d) Attorney General's Public Records and Meetings Manual; \$20;

(e) Attorney General Opinions:

(A) Bound Volumes; Volume 20 (1940-42) through Volume 49 (1997-2001) including 2-volume index; \$921;

(B) Future Bound Volumes; \$70;

(C) Slip Opinion Service (yearly); \$60;

(D) Letters of Advice Index, 1969-83; \$20;

(E) Letters of Advice Index, 1983-88; \$40;

(F) Letters of Advice Index, 1988-93; \$40;

(G) Future Letters of Advice Indices; \$40.

Stat. Auth.: ORS 192.430(2) & 192.440(3)

Stats. Implemented: ORS 192.440(3)

Hist.: JD 1-1982, f. & ef. 1-7-82; JD 1-1983(Temp), f. & ef. 5-3-83; JD 7-1983, f. & ef. 11-2-83; JD 4-1984(Temp), f. & ef. 11-7-84; JD 1-1985, f. & ef. 1-23-85; JD 3-1986, f. & ef. 1-27-86; JD 2-1990, f. & cert. ef. 2-14-90; JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998, f. & cert. ef. 2-4-98; DOJ 9-1999, f. & cert. ef. 12-8-99; DOJ 11-2001, f. & cert. ef. 12-10-01; DOJ 16-2003, f. & cert. ef. 12-9-03; DOJ 18-2003(Temp), f. & cert. ef. 12-10-03 thru 6-1-04; DOJ 13-2004(Temp), f. & cert. ef. 11-1-04 thru 1-31-05

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

Adm. Order No.: OSFM 5-2004

Filed with Sec. of State: 11-10-2004

Certified to be Effective: 11-10-04

Notice Publication Date: 10-1-04

Rules Amended: 837-012-1230, 837-012-1320

Subject: The need for these permanent rules is to make three corrections discovered upon reviewing the existing permanent rules. The following changes are for housekeeping and clarification purposes:

The first correction is to 837-012-1230, to revise the acronym for the Bureau of Tobacco and Firearms, formerly known as BATF. This federal agency is now known as the Bureau of Alcohol, Tobacco Firearms, and Explosives; therefore, the acronym should be changed to BATFE.

The second revision is to 837-012-1320, which pertains to the requirement that an inspection shall be completed not more than six months prior to the date of the application for a Certificate of Registration. For clarification purposes to the explosives industry, this time period should be changed to not more than 180 days.

The third revision is a minor housekeeping change of 837-012-1230(4)(d), in which a hyphen is added after the fee of \$50. The other fees listed in 837-012-1230(4)(a), (b), and (c) already have hyphens after the amount.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

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837-012-1230

Fees

(1) Fees Shall be payable to the Office of State Fire Marshal.
(2) Fees Shall be paid at, or mailed to, the Office of State Fire Marshal and Shall accompany the appropriate application.

(3) Payment Shall be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal. If the fee is paid by either personal or business check, the Office of State Fire Marshal Shall not take any action on the application until the check has cleared the bank.

(4) Fees are:

(a) \$50 — Certificate of Possession

(b) \$30 — Examination

(c) \$125 — Magazine Registration with Office of State Fire Marshal inspection

(d) \$50 — Magazine Registration with acceptance of BATFE inspection

(5) Fees are non-refundable and non-transferable.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 5-2004, f. & cert. ef. 11-10-04

837-012-1320

Certificate of Registration of Magazine — With Bureau of Alcohol, Tobacco and Firearms Inspection

(1) The Office of State Fire Marshal may accept an inspection completed by BATFE in lieu of the Office of State Fire Marshal inspection.

(2) The decision to accept or not accept the BATFE inspection rests solely with the Office of State Fire Marshal.

(3) The Office of State Fire Marshal Shall consider, but is not limited to, the following criteria in deciding whether to accept a BATFE inspection:

(a) The inspection Shall be completed not more than 180 days prior to the date of the application for a Certificate of Registration;

(b) United States Post Office postmark date shall be used to determine the date of application.

(c) The inspection Shall show the Magazine is in compliance with these rules.

(d) If deficiencies are noted on the BATFE inspection, the Office of State Fire Marshal may decide to conduct its own inspection. Should the Office State Fire Marshal decide to complete its own inspection, the applicant Shall submit payment of the additional fee amount of \$75 required for a Certificate of Registration with a State Fire Marshal inspection prior to the Office of State Fire Marshal conducting its inspection.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 5-2004, f. & cert. ef. 11-10-04

Health Licensing Office Chapter 331

Adm. Order No.: HLO 9-2004

Filed with Sec. of State: 10-25-2004

Certified to be Effective: 11-1-04

Notice Publication Date: 10-1-04

Rules Amended: 331-505-0010

Subject: The proposed rule reinstates a "duplicate fee" and is necessary to correct a discrepancy in filing the permanent rule changes effective July 1, 2004. There was an inadvertent omission of the duplicate fee required to replace a license that has been misplaced, lost, destroyed or damaged. The omission occurred as a result of reformatting the fee schedule and overlooking inclusion of the duplicate fee in the section.

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

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;

(D) Duplicate license: \$25.

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; HLO 8-2004(Temp), f. & cert. ef. 8-20-04 thru 2-16-05; HLO 9-2004, f. 10-25-04, cert. ef. 11-1-04

Adm. Order No.: HLO 10-2004(Temp)

Filed with Sec. of State: 11-8-2004

Certified to be Effective: 11-8-04 thru 3-31-05

Notice Publication Date:

Rules Amended: 331-710-0010, 331-715-0010, 331-720-0010

Subject: The current rules do not address a mechanism for renewal/reinstatement of a license if a licensee fails to obtain the required continuing education hours every two years as a condition of licensure, or lets the license remain in an expired status beyond two years. The emergency rule is necessary to prevent individual's employment and/or licensing status being adversely affected as licensure is required for practicing respiratory care in Oregon. The temporary rule provides an alternative to meeting continuing education requirements while still ensuring continued competency of professionals working as respiratory care therapists in Oregon. It also removes artificial barriers to individuals licensed as respiratory therapists in another state in active practice a means to qualify for Oregon licensure. Individuals may provide proof of licensure and active practice in another state, or evidence of completion of the national examination within one year preceding date of application for renewal/reinstatement. This rule will undergo normal rulemaking procedures to allow opportunity for comment.

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

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 one of the following criteria:

(a) **NATIONAL CREDENTIAL:** Official documentation of a passing score, successfully completed within one year preceding the date of application, 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.

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(b) **OUT OF STATE LICENSURE:** Official 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 a respiratory therapist license 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. The Affidavit must indicate whether the applicant satisfactorily passed the NBRC examination or a state prepared examination that has been approved by the Board as being equivalent to the national examination.

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; HLO 10-2004(Temp), f. & cert. ef. 11-8-04 thru 3-31-05

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) Failure to meet continuing education requirements of OAR 331-720-0010, will require reapplication and qualification for licensure according to the provisions of OAR 331-710-0010(2) (a) or (b).

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; HLO 10-2004(Temp), f. & cert. ef. 11-8-04 thru 3-31-05

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, whether the license is active or inactive. At least two-thirds of the required continuing education hours shall be related to clinical practice of respiratory care.

(2) To renew the license, evidence of required continuing education shall be provided at the time of renewal by means of a prescribed self-attestation statement certifying participation in approved continuing education. Appropriate documentation stipulated in this rule must be accumulated and held by the license holder until submitted to the agency at the time of audit.

(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 require-

ment, 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;

(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.

(8) A person who does not meet continuing education requirements must reapply and meet requirements for licensure according to OAR 331-710-0010 at the time of 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; HLO 10-2004(Temp), f. & cert. ef. 11-8-04 thru 3-31-05

Insurance Pool Governing Board
Chapter 442

Adm. Order No.: IPGB 1-2004

Filed with Sec. of State: 11-1-2004

Certified to be Effective: 11-1-04

Notice Publication Date: 10-1-04

Rules Adopted: 442-001-0010, 442-001-0015, 442-004-0085, 442-004-0117

Rules Amended: 442-001-0000, 442-001-0005, 442-004-0010, 442-004-0020, 442-004-0050, 442-004-0070, 442-004-0080, 442-004-0090, 442-004-0110, 442-004-0115, 442-004-0120, 442-004-0130, 442-004-0140, 442-004-0150, 442-004-0160

Rules Repealed: 442-003-0000, 442-003-0010, 442-003-0020, 442-003-0030, 442-003-0040, 442-003-0050, 442-003-0060, 442-003-0070, 442-003-0080, 442-003-0090, 442-004-0005

Subject: 442-001-0010 - Adopting section in place of current section 442-004-0005, which requires an answer to charges as part of Notices to Parties in Contested Cases.

442-001-0015 – Adopting section to implement consequences for failure to answer. Explains that when an applicant requests a hearing, they must admit or deny each factual matter alleged in the notice. Failure to deny factual matters shall be presumed admitted, and failure to raise a particular defense in the answer will be considered a waiver of such defense.

442-004-0085 – Adopting this section to allow for certain extenuating circumstances.

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442-004-0117 – Adopting this section to allow the agency to audit current and past program members and to enforce penalties when appropriate.

Rule 442-001-0000 is being amended to give notice in the Secretary of State's Bulletin at least 21 days prior to the effective date of rule changes instead of the current 15-day notice requirement. Requiring notice to legislators specified in ORS 183.335 (15).

Rule 442-001-0005 is being amended to adopt the Attorney General's Model Rules of Procedure effective 01/15/2004.

Rule 442-004-0010 is being amended to clarify the definition of investments and savings, to define "Alien status requirement," and to clarify the definitions for "benchmark," "health insurance producer," "income," "investments and savings," "misrepresentation," "qualified non-citizen," and "support."

Rule 442-004-0020 is being amended to update the applicable dates and legislative sessions.

Rule 442-004-0050 is being amended to include new language that allows applicants who enrolled in their employer-sponsored health insurance plan within 90 days of applying to FHIAP be considered to have met the period of uninsurance, to not count the Kaiser Child Health Program or any benefit plan authorized by ORS 735.700 – 735.714 against the period of uninsurance, to take out the requirement that applicants must comply with the Department of Revenue in regard to filing their taxes, to clarify what date a person must meet the definition of "family" or "dependent" for consideration on an application, to clarify how FHIAP determines income, and to clarify the employer sponsored enrollment process.

Rule 442-004-0070 is being amended to increase the amount of time an applicant has to submit an application to the program from 60 days to 75 days.

Rule 442-004-0080 is being amended to increase the amount of time an applicant has to submit additional information when requested by FHIAP from 30 days to 45 days, and to require information relating to an applicant's access to employer sponsored health insurance when submitting an application for group subsidy.

Rule 442-004-0090 is being amended to allow subsidy payments to parents of child members.

Rule 442-004-0110 is being amended to increase the amount of time an existing FHIAP member has to return their redetermination application from 30 days to 45 days, and to increase the amount of time an existing FHIAP member has to return additional information requested during the redetermination application process from 30 to 45 days.

Rule 442-004-0115 to further clarify program reporting requirements.

Rule 442-004-0120 is being amended to clarify reasons that a member may be terminated from the program.

Rule 442-004-0130 is being amended to change "fraudulent misrepresentation" to "misrepresentation."

Rule 442-004-0140 is being renamed from "fraudulent misrepresentation" to "misrepresentation," and is amended to remove all citations of the word "fraudulent."

Rule 442-004-0150 is being amended to allow 21 days to request an appeal instead of 15 days.

Rule 442-004-0160 is being amended to allow 21 days to request a hearing instead of 15 days.

Repealing Division 3 in its entirety because this program no longer exists but, due to an oversight, the rules were never repealed.

Rule 442-004-0005 is being repealed and adopted as rule 442-001-0010.

Rules Coordinator: Nicole Shuba—(503) 378-4676

442-001-0000

Notice

Prior to adoption, amendment or repeal of any permanent rule, the Insurance Pool Governing Board 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 before the effective date of the intended action.

(2) By mailing copies of the notice at least thirty (30) days prior to the effective date to the persons on the mailing list established by the Board under 183.335(8), and the following publications and organizations:

(a) Publications:

- (A) The Associated Press;
- (B) The Daily Journal of Commerce; and
- (C) The United Press International.

(b) Organizations:

- (A) Authorized health insurers;
- (B) National Federation of Independent Business;
- (C) Oregon Association of Health Underwriters;
- (D) Portland Business Group for Health;
- (E) Health Insurance Association of America;
- (F) Oregon Life Underwriters Association.

(3) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective day of the notice.

Stat. Auth.: ORS 183 & 653

Stats. Implemented: ORS 183

Hist.: IP 1-1989, f. & cert. ef. 1-13-89; IP 4-1989, f. & cert. ef. 9-29-89; IPGB 1-2004, f. & cert. ef. 11-1-04

442-001-0005

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Insurance Pool Governing Board adopts in its entirety the Attorney General's Model Rules of Procedure under the Administrative Procedures Act bearing the effective date of January 15, 2004.

[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 Insurance Pool Governing Board.]

Stat. Auth.: ORS 183, 653.735 & 653.835

Stats. Implemented: ORS 183

Hist.: IP 1-1989, f. & cert. ef. 1-13-89; IPGB 1-1998, f. 2-18-98, cert. ef. 3-1-98; IPGB 1-2004, f. & cert. ef. 11-1-04

442-001-0010

Requiring an Answer to Charges as Part of Notices to Parties in Contested Cases

In addition to the notice requirements under the Attorney General's Model Rules of Procedure under OAR 442-001-0005, the Notice to Parties in Contested Cases may include the statement that an answer to the assertions or charges will be required, and if so, the consequence of failure to answer. A statement of the consequences of failure to answer may be satisfied by enclosing a copy of OAR 442-001-0015 with the notice.

Stat. Auth.: ORS 183, 735.734

Stats. Implemented: ORS 183

Hist.: IPGB 1-2004, f. & cert. ef. 11-1-04

442-001-0015

Hearing Request and Answers: Consequences of Failure to Answer

(1) A hearing request, and answer when required, shall be made in writing to the Board by the party or his/her attorney and an answer shall include the following:

- (a) An admission or denial of each factual matter alleged in the notice;
- (b) A short and plain statement of each relevant affirmative defense the party may have;

(2) Except for good cause:

- (a) Factual matters alleged in the notice and not denied in the answer shall be presumed admitted;
- (b) Failure to raise a particular defense in the answer will be considered a waiver of such defense;
- (c) New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the board; and
- (d) Evidence shall not be taken on any issue not raised in the notice and answer.

Stat. Auth.: ORS 183, 735.734

Stats. Implemented: ORS 183

Hist.: IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0010

Definitions

(1) "Alien Status Requirement." A qualified non-citizen meets the alien status requirement for FHIAP if the individual is one of the following:

- (a) A person who was admitted as a qualified non-citizen on or before August 22, 1996.
- (b) A person who entered the U.S. on or after August 22, 1996 and it has been five years since he or she became a qualified non-citizen.
- (c) A person who has obtained their qualified non-citizen status less than five years ago, but entered the U.S. prior to August 22, 1996. The non-citizen must show that he or she has been living in the U.S. continuously

ADMINISTRATIVE RULES

for five years from a date prior to August 22, 1996 to the date the non-citizen obtained their qualified status and did not leave during that five year period. If the non-citizen cannot establish the five-year continuous residence before he or she obtained their qualified status, the person is not considered to have entered the U.S. prior to August 22, 1996.

(d) Regardless when they were admitted, a person with one of the following designated statuses:

(A) A person who is admitted as a refugee under section 207 of the INA;

(B) A person who is granted asylum under section 208 of the INA;

(C) A person whose deportation is being withheld under section 243 (h) of the INA;

(D) A Cuban or Haitian entrant who is either a public interest or humanitarian parolee;

(E) A person who was granted immigration status according to the Foreign Operations Export Financing and Related Program Appropriation Act of 1988;

(F) A person who is a victim of a severe form of trafficking.

(e) Regardless of when they were admitted, a qualified non-citizen who is:

(A) A veteran of the U.S. Armed Forces, who was honorably discharged not on account of alien status and who fulfills the minimum active-duty service requirement; or

(B) On active duty in the U.S. Armed Forces (other than active duty for training).

(C) The spouse or unmarried dependent child of the veteran or person on active duty described in (e) (A) and (B).

(f) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) apply; or

(g) A member of an Indian tribe (as described in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(h) Any legal non-citizen who was approved for a FHIAP subsidy prior to November 1, 2004.

(2) "Appeal" means the opportunity for an applicant to request and receive administrative review by Board staff of a decision made or action taken by the Third Party Administrator (TPA) or state agency regarding program eligibility, subsidy level, termination, re-enrollment, overpayments, misrepresentation, or any other decision adverse to the applicant.

(3) "Applicant" means a person who has initially applied or a member who is applying for continuation of FHIAP subsidy payments, but who has not yet been determined or redetermined to be eligible to receive such subsidy or continued subsidy.

(4) "Benchmark" means an identified minimum level of health insurance benefits qualifying for subsidy eligibility. The benchmark is established by the Board in consultation with the Health Insurance Reform Advisory Committee and is submitted to and approved by the federal government. Plans that do not cover services that are available through community resources may be approved for FHIAP subsidy.

(5) "Board" means the Insurance Pool Governing Board established under ORS 735.704.

(6) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance. Carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(7) "Certified carrier" means a carrier that has been certified by the Board to participate in FHIAP. Certified carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(8) "Dependent" for the purposes of FHIAP means:

(a) An applicant's spouse.

(b) All of the applicant's and applicant's spouse's unmarried children and step children (dependent children, unless otherwise stipulated in this section, must be under the age of 19 and reside with the applicant at least 50 percent of the time as stipulated in an official court document; or, who are full-time college students under the age of 23 who may or may not reside with the applicant while attending college. The term "full-time" will be as defined by the institution in which the dependent is enrolled; the burden of proving full-time college student status will be on the applicant).

(c) An applicant's and applicant's spouse's unmarried legally adopted children or children placed under the legal guardianship of the applicant or their spouse. All of the children described in this subsection (c) must also meet the criteria in subsection (b) directly above.

(d) An applicant's and applicant's spouse's unmarried child over the age of 18 with a severe disability as documented by the Social Security Administration.

(e) An unborn child of any applicant or their dependent as verified by written correspondence from a licensed medical practitioner.

(9) "Family" is defined in ORS 735.720(2).

(10) "Federal poverty level" means the poverty income guidelines as defined by the United States Department of Health and Human Services. These guidelines will be adopted by FHIAP no later than May 1 each year.

(11) "FHIAP" means the Family Health Insurance Assistance Program established by ORS 735.720 to 735.740.

(12) "Health Benefit Plan" is defined in ORS 735.720(3)(a) and (b).

(13) "Health insurance producer" means a person who holds a current, valid license pursuant to ORS 774.089 as an insurance producer, where such producer is authorized to transact health insurance.

(14) "Incarcerated" means a person living in a correctional facility. The following individuals are considered to be living in correctional facilities:

(a) Individuals who are legally confined to a correctional facility such as jail, prison, penitentiary, or juvenile detention center;

(b) Individuals temporarily released from a correctional facility to perform court-imposed community service work;

(c) Individuals on short-term leave, fewer than 30 days, from a correctional facility;

(d) Individuals released from a correctional facility for the sole purpose of obtaining medical care.

(15) "Income" includes, but is not limited to, earned and unearned income received by adults and unearned income received by children. Income includes bartering, or working in exchange for goods and services, discounts on goods and services, working in exchange for rent, and payments made for personal living expenses from business funds. For purposes of determining average monthly income, an applicant may deduct child or spousal support payments made by the applicant for a child or spouse that FHIAP does not consider a dependent. No deduction is allowed for support that is owed but not paid and collected through an offset against the applicant's state income tax refund.

(a) In order for FHIAP to take this deduction in income, the applicant must provide proof of the support payments by sending FHIAP either a printout from the Support Enforcement Division, or by sending copies of cancelled checks showing the payments made to the obligee.

(b) Income also includes educational income. FHIAP will allow a reduction of the educational income received equal to the amount of tuition and fees paid plus \$500 for books and other expenses, or an amount the applicant can show in receipts for the expenses, whichever is more.

(16) "Investments and savings" include, but are not limited to: cash, checking accounts, savings accounts, time certificates, stocks, bonds, non-retirement qualified annuities, other securities easily converted to cash, and the tax-assessed value, as indicated by the county assessor, of any residential or commercial property that is owned by or in which a beneficial interest is held by the applicant or the applicant's family. "Investments and savings" does not include one property maintained by the applicant or the applicant's family as a primary residence. If the applicant or applicant's family maintain multiple residences or own real property as residential rentals, those properties (other than one single primary residence) are included within the definition of "investments and savings." "Investment and savings" excludes commercial property owned or leased by an applicant or an applicant's family and used by the applicant or the applicant's family exclusively to conduct a business operated by the applicant or the applicant's family. "Investments and savings" also excludes qualified retirement accounts, including but not limited to IRAs and 401(k) plans.

(17) "Liable adult" means a person or persons who applied for or receives a subsidy for themselves or others. Children are not considered liable adults if their parent or guardian applied for or received a subsidy on the child's behalf.

(18) "Medicaid," see OHP.

(19) "Medicare" is a federal health insurance program for those who are 65 or older, disabled, or have permanent kidney failure. May include both Parts A and B, or may only include Part A or Part B.

(20) "Member" means a person enrolled in FHIAP and eligible for or receiving a subsidy from the program.

(21) "Misrepresentation" means making an inaccurate or deliberately false statement of fact, by word, action, or omission of material fact.

(22) "OHP" means the Oregon Health Plan Medicaid program and all programs that include medical assistance provided under 42 U.S.C. section 396a (section 1902 of the Social Security Act).

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(23) "Overpayment" means any subsidy payment made that exceeds the amount a member is eligible for, and has been received by, or on behalf of, that member.

(24) "Overpayment amount" means:

(a) The total amount of subsidy payments the Board has paid to, or on behalf of, an ineligible member; or

(b) The total amount of subsidy payments in excess of the correct subsidy amount paid to, or on behalf of, an eligible member; or

(c) Both (a) and (b).

(25) "Postmark" means the postmark date affixed by the United States Postal Service.

(26) "Public institution" means state-funded residential facilities such as Eastern Psychiatric Center, Oregon State Hospital, or Eastern Oregon Training Center.

(27) "Qualified non-citizen" for the purposes of FHIAP. 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. 1523(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(i) American Indians born in Canada to whom the provision of section 289 of the INA (8 U.S.C. 1359) apply.

(j) Members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(k) A veteran of the U.S. Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty requirements described in 38 U.S.C. 5303A(d).

(l) A member of the U.S. Armed Forces on active duty (other than active duty for training).

(m) The spouse or dependent child of a person described in either (k) or (l) above.

(n) A legal non-citizen approved for FHIAP subsidy prior to November 1, 2004.

(28) "Redetermination" means the periodic review and determination of a member's continued eligibility or subsidy level.

(29) "Reservation list" means a list of potential applicants for FHIAP, entered onto a register maintained by the TPA or state agency as authorized by ORS 735.724.

(30) "Resident" means an individual who demonstrates to the Board that the individual is lawfully residing in Oregon and intends to reside in Oregon permanently.

(a) There is no minimum amount of time a person must have lived in Oregon to be a resident;

(b) Applicants and their families must intend to remain in Oregon, except for full-time students attending school in another state who are eligible for coverage under the terms of the health benefit plan selected by the member.

(31) "Self-employment" criteria include, but are not limited to, applicants who submit with their FHIAP application an Internal Revenue Service (IRS) Schedule C tax form or a federal form 1099, and for adult foster care givers proof that the recipient of the care resides in the applicant's home. Self-employment does not include partnerships, S-corporations, C-corporations, limited liability corporations, and adult foster care-givers whose care recipient does not reside in the applicant's home. Any income reported on the IRS Schedule E is also not considered self-employment and will not be subject to any deductions.

(32) "Support" means any court-ordered monetary payment for a child or former spouse or domestic partner whom FHIAP does not count in the applicant's family.

(33) "Voluntary payroll deduction" means an amount the employee has authorized the employer to deduct from the employee's income to pay expenses not required by law.

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

Stat. Auth.: ORS 735.724, 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 2-2002(Temp), f. 4-19-02, cert. ef. 5-11-02 thru 10-31-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 4-2002(Temp), f. & cert. ef. 12-6-02 thru 6-4-03; IPGB 1-2003, f. & cert. ef. 6-16-03; Hist.: IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0020

Program and Subsidy Duration

(1) FHIAP will make subsidy payments to members as long as authorized and funded by the Oregon Legislature. The subsidy is paid on behalf of each member enrolled in the program. The Board will establish procedures to monitor funds for subsidy payments.

(2) Subsidy payments will be available to members until the funds authorized by the 73rd Oregon Legislative Assembly are exhausted or June 30, 2005, whichever is sooner, unless the Family Health Insurance Assistance Act is re-authorized and funded by the Oregon Legislative Assembly.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0050

Eligibility

(1) To be eligible to receive a subsidy for purchasing a health benefit plan in the individual market an applicant:

(a) Must be a resident of Oregon.

(b) Must be a United States citizen or a qualified non-citizen who meets the alien status requirement.

(c) Must have been without any health benefit plan coverage for the six months immediately prior to either getting on a FHIAP reservation list or at the time of application processing for subsidy in the individual health benefit plan market. This requirement does not apply if any applicant:

(A) Has been enrolled in OHP and been without a health benefit plan since leaving OHP, regardless of any health benefit plan coverage prior to entering OHP; or

(B) Has been enrolled in OHP and been subsidized in a health benefit plan during enrollment in OHP, if application for the FHIAP reservation list occurs within 60 days of leaving OHP; or

(C) Is currently enrolled in OHP.

(D) Meets the criteria as stipulated in OAR 442-004-0070(10).

(E) Has coverage through the Kaiser Child Health Program or any benefit plan authorized by ORS 735.700 - 735.714.

(d) Must have average monthly income, from all sources, of up to 185 percent of the federal poverty level in effect at the time of determination.

(A) Average income from all sources, except income received from farming, fishing, ranching, or self-employment, will be determined using income received in the three-calendar months prior to the month in which the application was signed.

(B) Average income received from farming, fishing, and ranching will be determined using income received from all farming, fishing, and ranching sources during the 12 months prior to the month the application was signed. FHIAP will determine whether income received is considered farming, fishing or ranching income and is subject to this 12-month income determination period. Average income will be determined by either method below (i or ii) as specified by the applicant on the Self-Employment Worksheet. Whichever method the applicant chooses to use will be the method used throughout that year's eligibility determination, including appeal and hearing processes.

(C) FHIAP will determine if the applicant or their spouse meets the definition of self-employment. Upon meeting the definition of self-employment, the average gross monthly income received from self-employment and prior to FHIAP deductions will be determined using gross income received from the self-employed business during the six months prior to the month in which the application was signed. If the average gross monthly self-employment income during the six months prior to the month the application was signed exceeds \$10,000.00, the applicant will be ineligible for FHIAP. Average adjusted income will be determined by either method below (i or ii) as specified by the applicant on the Self-Employment

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Worksheet. Whichever method the applicant chooses to use will be the method used throughout that year's eligibility determination, including appeal and hearing processes.

(i) Income received from farming, fishing, ranching and self-employment will be reduced by 50 percent for business expenses; or

(ii) Income received from farming, fishing, ranching and self-employment will be reduced by the actual allowable expenses incurred during the six or twelve months prior to the date the application was signed.

(I) The following are considered allowable expenses:

(1-a) Labor (wages paid to an employee or work contracted out) except when paid to the applicant, anyone in the applicant's family, or a business partner.

(1-b) Raw materials, equipment, machinery or other durable goods used to make a product or provide a service, excluding personal vehicles and real property. FHIAP will determine whether a vehicle is considered a personal vehicle based upon information submitted by the applicant and information obtained from the Department of Motor Vehicles.

(1-c) Interest paid to purchase income-producing property, such as equipment or capital assets.

(1-d) Insurance premiums, taxes, assessments, and utilities paid on income-producing property.

(1-e) Service, repair, and rental of business equipment (including motor vehicles) and property that is owned, leased or rented, excluding personal vehicles. FHIAP will determine whether a vehicle is considered a personal vehicle based upon information submitted by the applicant and information obtained from the Department of Motor Vehicles.

(1-f) Advertisements and business supplies.

(1-g) Licenses, permits, legal, or professional fees.

(1-h) Transportation costs at 20 cents per mile, if the cost is part of the business expense. Commuting expenses to and from the worksite are not considered part of the business expense. If applicant is able to prove actual expenses for fuel and maintenance on business vehicles, those amounts can be deducted in lieu of the mileage calculation. In no instance will both deductions be allowed.

(1-i) Charges for telephone services that can be verified as a necessary expense for self-employment.

(1-j) Meals and snacks provided by family day care providers. The actual cost of the meals will be used if the provider can document the cost. If they cannot document the actual cost, the following figures will be used: Breakfast \$.99; Lunch \$1.83; Dinner \$1.83; and Snacks \$.54.

(1-k) Costs related to traveling to another area only when there is a reasonable possibility of deriving income from the trip, except for the cost of meals.

(1-l) Business related bank and credit card fees.

(1-m) Bad debt.

(II) The following are not allowed as costs of producing self-employment income:

(II-a) Meals for the applicant or their family.

(II-b) Payments on the principal of the purchase price of income-producing real estate.

(II-c) Federal, state, and local income taxes, draws, or salaries paid to any family member, money set aside for personal retirement, and other work-related personal expenses (such as transportation, personal business, and entertainment expenses).

(II-d) Depreciation.

(II-e) Costs related to traveling to another area when there is no reasonable possibility of deriving income from the trip.

(II-f) Interest paid on credit card accounts.

(II-g) Personal telephone charges.

(II-h) The costs of real property used as both a home and a business.

(II-i) Losses incurred by another business.

(D) Income is available immediately upon receipt, or when the applicant has a legal interest in the income and the legal ability to make the income available, except in the following situations when it is considered available as indicated:

(i) For earned and unearned income:

(I) Income available prior to any deductions such as garnishments, taxes, payroll deductions, or voluntary payroll deductions will be considered as available; however, support payments as defined in OAR 442-004-0010(34) may be deducted from gross income if the applicant is able to prove the payments were made.

(II) Income usually paid monthly or on some other regular schedule, but paid early or late is treated as available on the regular payday.

(ii) Earned income is available as follows:

(I) Income withheld or diverted at the request of an employee is considered available in the month the wages would have been paid;

(II) An advance or draw that will be subtracted from later wages is available when received.

(iii) Payments that should legally be made directly to an applicant, but are paid to a third party on behalf of an applicant, are considered available the date that is on the check or stub.

(E) Income is not available if:

(i) The wages are withheld by an employer, with the exception of garnishment, even if in violation of the law;

(ii) The income is paid jointly to the applicant and other individuals and the other individuals do not pay the applicant his/her share.

(e) Must have investments and savings less than \$10,000 on the last day of the month previous to the month in which the application is signed.

(f) Must enroll in a plan that meets the benchmark as established by the Board and is offered by a FHIAP-certified carrier.

(2) To be eligible to receive a subsidy for employer-sponsored health benefit plans an applicant:

(a) Must be a resident of Oregon.

(b) Must be a United States citizen or a qualified non-citizen who meets the alien status requirement.

(c) Must have been without any health benefit plan coverage for the six months immediately prior to either getting on a FHIAP reservation list or at the time of application processing for subsidy eligibility. This requirement does not apply if any applicant:

(A) Has been enrolled in OHP and been without a health benefit plan since leaving OHP, regardless of any health benefit plan coverage prior to entering OHP; or

(B) Has been enrolled in OHP and been subsidized in a health benefit plan during enrollment in OHP, if application for the FHIAP reservation list occurs within 60 days of leaving OHP; or

(C) Is currently enrolled in the OHP.

(D) Meets the criteria as stipulated in OAR 442-004-0070(10).

(E) Has coverage through the Kaiser Child Health Program or any benefit plan authorized by ORS 735.700 – 735.714.

(F) Applies for a FHIAP subsidy within 90 days after enrolling in employer sponsored insurance, provided the applicant had been without any insurance coverage for six consecutive months immediately before becoming insured under the employer sponsored insurance.

(d) Must have average monthly income, from all sources, of up to 185 percent of the federal poverty level in effect at the time of determination.

(A) Average income from all sources, except income received from farming, fishing, ranching, or self-employment, will be determined using income received in the three calendar months prior to the month in which the application was signed.

(B) Average income received from farming, fishing, and ranching will be determined using income received from all farming, fishing, and ranching sources during the 12 months prior to the month the application was signed. FHIAP will determine whether income received is considered farming, fishing or ranching income and is subject to this 12 month income determination period. Average income will be determined by either method below (i or ii) as specified by the applicant on the Self-Employment Worksheet. Whichever method the applicant chooses to use will be the method used throughout that year's eligibility determination, including appeal and hearing processes.

(C) FHIAP will determine if the applicant or their spouse meets the definition of self-employment. Upon meeting the definition of self-employment, the average gross monthly income received from self-employment and prior to FHIAP deductions will be determined using gross income received from the self-employed business during the six months prior to the month in which the application was signed. If the average gross monthly self-employment income during the six months prior to the month the application was signed exceeds \$10,000.00, the applicant will be ineligible for FHIAP. Average adjusted income will be determined by either method below (i or ii) as specified by the applicant on the Self-Employment Worksheet. Whichever method the applicant chooses to use will be the method used throughout that year's eligibility determination, including appeal and hearing processes.

(i) Income received from farming, fishing, ranching and self-employment will be reduced by 50 percent for business expenses; or

(ii) Income received from farming, fishing, ranching and self-employment will be reduced by the actual allowable expenses incurred during the six or twelve months prior to the date the application was signed.

(e) The following are considered allowable expenses:

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(a) Labor (wages paid to an employee or work contracted out) except when paid to the applicant, anyone in the applicant's family, or a business partner(s).

(b) Raw materials, equipment, machinery or other durable goods used to make a product or provide a service, excluding personal vehicles and real property. FHIAP will determine whether a vehicle is considered a personal vehicle based upon information submitted by the applicant and information obtained from the Department of Motor Vehicles.

(c) Interest paid to purchase income-producing property, such as equipment or capital assets.

(d) Insurance premiums, taxes, assessments, and utilities paid on income-producing property.

(e) Service, repair, and rental of business equipment (including motor vehicles) and property that is owned, leased or rented, excluding personal vehicles. FHIAP will determine whether a vehicle is considered a personal vehicle based upon information submitted by the applicant and information obtained from the Department of Motor Vehicles.

(f) Advertisements and business supplies.

(g) Licenses, permits, legal, or professional fees.

(h) Transportation costs at 20 cents per mile, if the cost is part of the business expense. Commuting expenses to and from the worksite are not considered part of the business expense. If applicant is able to prove actual expenses for fuel and maintenance on business vehicles, those amounts can be deducted in lieu of the mileage calculation. In no instance will both deductions be allowed.

(i) Charges for telephone services that can be verified as a necessary expense for self-employment.

(j) Meals and snacks provided by family day care providers. The actual cost of the meals will be used if the provider can document the cost. If they cannot document the actual cost, the following figures will be used: Breakfast \$.99; Lunch \$1.83; Dinner \$1.83; and Snacks \$.54.

(k) Costs related to traveling to another area only when there is a reasonable possibility of deriving income from the trip, except for the cost of meals.

(l) Business related bank and credit card fees.

(m) Bad debt.

(n) The following are not allowed as costs of producing self-employment income:

(A) Meals for the applicant or or their family.

(B) Payments on the principal of the purchase price of income-producing real estate.

(C) Federal, state, and local income taxes, draws, or salaries paid to any family member, money set aside for personal retirement, and other work-related personal expenses (such as transportation, personal business, and entertainment expenses).

(D) Depreciation.

(E) Costs related to traveling to another area when there is no reasonable possibility of deriving income from the trip.

(F) Interest paid on credit card accounts.

(G) Personal telephone charges.

(H) The costs of real property used as both a home and a business.

(I) Losses incurred by another business.

(D) Income is available immediately upon receipt, or when the applicant has a legal interest in the income and the legal ability to make the income available, except in the following situations when it is considered available as indicated:

(i) For earned and unearned income:

(I) Income available prior to any deductions such as garnishments, taxes, payroll deductions, or voluntary payroll deductions will be considered as available; however, support payments as defined in OAR 442-004-0010(16)(a) may be deducted from gross income if the applicant is able to prove the payments were made.

(II) Income usually paid monthly or on some other regular schedule, but paid early or late is treated as available on the regular payday.

(ii) Earned income is available as follows:

(I) Income withheld or diverted at the request of an employee is considered available in the month the wages would have been paid;

(II) An advance or draw that will be subtracted from later wages is available when received.

(iii) Payments that should legally be made directly to an applicant, but are paid to a third party on behalf of an applicant, are considered available the date that is on the check or stub.

(E) Income is not available if:

(i) The wages are withheld by an employer, with the exception of garnishment, even if in violation of the law;

(ii) The income is paid jointly to the applicant and other individuals and the other individuals do not pay the applicant his/her share.

(e) Must be able to enroll and have premium subsidized in an employer-sponsored health benefit plan that meets the benchmark standard established by the Board. Plans that do not cover services that are available through community resources may be approved for FHIAP subsidy.

(A) If the applicant or their family are eligible to enroll within 120 days of FHIAP approval, FHIAP will assist with the enrollment process into the employer-sponsored plan.

(B) If the applicant or their family are eligible to enroll after 120 days, FHIAP will approve the family members for an individual subsidy until they are eligible to enroll in the employer-sponsored plan. FHIAP will mail these applicants and their families a certificate of eligibility allowing them to enroll according to the eligibility criteria in OAR 442-004-0050(1), (3) and (5) and enrollment criteria in OAR 442-004-0090.

(i) If the employer-sponsored coverage becomes available during the period between 121 days and the end of subsidy eligibility to those family members who have enrolled in the individual market, those members will be required to enroll in the employer-sponsored coverage and will cease to be eligible for a FHIAP subsidy in the individual market.

(ii) If the employer provides no coverage for all the family members, see OAR 442-004-0050(2)(f).

(f) Applicants on the employer-sponsored reservation list will be approved for a FHIAP subsidy only if an employer-sponsored health benefit plan is available to them or someone in their family. If an applicant is on the employer-sponsored reservation list and does not have an employer-sponsored health benefit plan available to them or to anyone in their family within 12 months or the health benefit plan does not meet the benchmark, the application will be denied and they will be given the option of being placed on the individual reservation list or will be automatically placed on the individual reservation list. They will be placed on the individual reservation list at the same date they were originally placed onto the group reservation list.

(g) Must have investments and savings less than \$10,000 on the last day of the month previous to the month in which the application was signed.

(3) Additional eligibility requirements include the following:

(a) To be included in the family size for FHIAP eligibility determination, must meet one of the definitions of family in ORS 735.720(2) on the last day of the month prior to the month in which the application is signed.

(b) Adult applicants are eligible to receive a subsidy only if all children eligible for FHIAP in the family are covered under some form of a health benefit plan. For the purposes of this section, OHP and the State Children's Health Insurance Program are health benefit plans.

(c) A dependent may not be counted in two separate households for the purposes of FHIAP and any other assistance program, such as the Oregon Health Plan. If a family member is found to have been counted in more than one household for the purposes of obtaining benefits, that person will not be counted in the family for FHIAP.

(d) All self-employed applicants purchasing small employer health benefit plans must contribute toward the payment of the employee-only portion of the premium. The amount of the contribution will be established by the Board, contingent upon federal regulations, and communicated to applicants through written correspondence.

(4) Termination occurs and members are ineligible to enroll or re-enroll in FHIAP:

(a) For six months from the date of termination when these members lose health benefit plan coverage for an eligible child or eligible children in the family and the coverage is not replaced within 120 calendar days from the time FHIAP notifies them that they must replace the eligible child's coverage.

(b) For six months from the date of termination when a FHIAP member is terminated from FHIAP for being enrolled simultaneously in OHP and FHIAP.

(c) Permanently when applicants are found to have committed misrepresentation on their application for FHIAP.

(5) Ineligibility results if:

(a) Any FHIAP applicant is eligible for or receiving Medicare. Subsidy may remain in force for the remainder of the member's 12-month eligibility period;

(b) Any FHIAP applicant or member is incarcerated beyond 30 continuous calendar days;

(c) Any FHIAP applicant or member is a resident of a public institution or a ward of the state; or

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(d) Any FHIAP member is enrolled in OHP and FHIAP simultaneously and fails to timely terminate from one program after being notified by FHIAP that they must do so.

(e) Any FHIAP member receives other health insurance coverage, not including the Oregon Health Plan or sporadic coverage, in addition to the plan FHIAP subsidizes.

(f) Any member or applicant is found to have committed material misrepresentation on their application for FHIAP or in their supporting documentation.

(g) Any information submitted is inconsistent and does not allow for eligibility determination.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 2-2002(Temp), f. 4-19-02, cert. ef. 5-11-02 thru 10-31-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0070

Reservation Lists

(1) To manage enrollment and ensure that funds are available to cover subsidy payments for those enrolled, two reservation lists will be established for FHIAP. The Board will establish procedures to manage the reservation lists with the goal of more equally distributing funds between the employer-sponsored health benefit market and the individual health benefit market. One list will be for prospective applicants who have or will have access to employer-sponsored health benefit coverage. One list will be for prospective applicants who do not have access to employer-sponsored health benefit coverage.

(2) The TPA or state agency will maintain both reservation lists.

(3) All prospective applicants must request a place on the appropriate reservation list or be assigned a reservation number before applications are processed and eligibility is determined.

(4) Prospective applicants will be added to the appropriate reservation list or assigned a reservation number in order of the date the TPA or state agency receives a completed reservation request either in writing or over the telephone.

(5) No requests for the reservation lists will be handled on a priority basis.

(6) Each request will be assigned a reservation number, which will also function as confirmation of placement on the appropriate reservation list.

(7) Prospective applicants on the reservation list will be notified of their right to apply for FHIAP as program funds are available.

(8) When enrollment in FHIAP reaches the maximum that funding will allow, additional enrollment may occur as current members terminate or if additional program funding becomes available.

(9) A prospective applicant has 75 days from the date the Board mails the application form, or notifies the prospective applicant that they may apply for a FHIAP subsidy, to return a completed application form to the Board. If the Board does not receive a completed application form within 60 days from the date it mails the application form, or notifies the applicant, the Board will mail a "15-day notice" to the prospective applicant advising that only 15 days remain in which to complete and submit the application form. If a prospective applicant does not return an application form within 75 days from the original date of mailing or notification, the Board will remove the prospective applicant's name from the reservation list.

(10) A prospective applicant may acquire a health benefit plan, for themselves or their dependents, while on the reservation list or at the same time they submit their reservation request, if the family or members of the family applying for subsidy met the six-month period of uninsurance requirement.

(11) New family members of current FHIAP members eligible to be added to existing health benefit plan coverage are not placed on the reservation list;

(12) Members who have terminated from FHIAP cannot re-enroll in the program without first being placed on the appropriate reservation list unless they have a family member who is still enrolled in FHIAP.

(13) Members who have been terminated from FHIAP due to ineligibility at redetermination or non-payment of premium, cannot re-enroll in the program without first being placed on the appropriate reservation list.

Stat. Auth.: ORS 735.734, 735.722(2) & 735.728(2)

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0080

Application Process

(1) An application form developed by the Board, and any documentation required on the form, will be used to determine eligibility and subsidy level.

(2) The Board will establish procedures for the application process with the goal of more equally distributing funds between the employer-sponsored health benefit market and the individual health benefit market. This may require the board to release applications from one reservation list ahead of the other reservation list.

(3) To apply for FHIAP, prospective applicants must first be in accordance with OAR 442-004-0070(3).

(4) The application process as stipulated in this application section, OAR 442-004-0080, will be the only time when applicants can submit information proving their program eligibility.

(5) As funds are available, prospective applicants on a reservation list are notified in writing of their eligibility to apply for FHIAP in accordance with OAR 442-004-0070(9). An application form is included with the notice.

(6) The applications will be processed according to the timelines stipulated in OAR 442-004-0070(9):

(a) If the completed application is not postmarked within the timelines stipulated in OAR 442-004-0070(9), the prospective applicant must get back on the appropriate FHIAP reservation list in order to receive another application as space permits.

(b) FHIAP has 30 calendar days to take action on the application for subsidy. The action may be approval, denial, or a request for further information from the applicant.

(A) When further information is requested, the applicant has 45 calendar days from the date on the request to provide the additional information. If the information requested by FHIAP is not received within 30 calendar days from the date on the request, the Board will mail a "15-day notice" to the applicant advising that only 15 days remain in which to provide the additional information. If an applicant does not provide all requested information within 45 days of the initial request, the application is denied.

(B) Once an applicant has been denied because the applicant failed to respond to the request for further information, the applicant must make a new reservation request to FHIAP to be sent an application in the future. Their name may be placed on the reservation list in the manner prescribed in OAR 442-004-0070.

(c) FHIAP may screen applications for FHIAP for potential eligibility for OHP. If FHIAP discovers that such potential eligibility exists, FHIAP will advise the applicant in writing of this possibility.

(7) Documents that verify required information provided on the application must be provided with the application if FHIAP is not able to verify the information electronically. Required documentation includes but is not limited to:

(a) A copy of a current Oregon identification or other proof of residency for all adult applicants;

(b) Documents verifying all adult applicant's and spouse's earned and unearned income and children's unearned income for the three months prior to the month in which the application is signed. Documentation may include, but is not limited to, pay stubs, award letters, support printouts and unemployment benefit stubs or printouts;

(c) Documents verifying income from self-employment for the six months prior to the signature date on the application, if applicable. Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(d) Documents verifying income from farming, fishing and ranching for the 12 months prior to the signature date on the application, if applicable. Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(e) The most recently filed federal tax return and all schedules.

(f) A copy of any employer sponsored insurance handbook, summary, or contract that is available to any applicant.

(g) A completed Group Insurance Information (GII) form, if the applicant has employer sponsored insurance available to them.

(8) Additional verification must be provided when FHIAP requests it.

(a) FHIAP may verify any factors affecting eligibility, benefit levels or any information reported. Such information includes, but is not limited to:

(A) Information reported is inconsistent;

(B) Information provided on the application is inconsistent;

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(C) Other information received by FHIAP is inconsistent with information on the FHIAP application;

(D) Information reported on previous applications is inconsistent with a current FHIAP application.

(b) FHIAP may decide at any time that additional eligibility factors must be verified.

(c) FHIAP may deny an application or end ongoing subsidy when acceptable verification is not provided.

Stat. Auth.: ORS 735.734, 735.722(2) & 735.728(2)

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 2-2002(Temp), f. 4-19-02, cert. ef. 5-11-02 thru 10-31-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0085

Extenuating Circumstances

The Board will designate a case management panel to review extenuating circumstance requests that may result in exceptions to application of the administrative rules. Requests relating to life circumstances beyond the applicant's control will be considered.

(1) Exceptions will not be granted for any eligibility requirements except that the timeframes associated with submitting information, including, but not limited to the application, income verification, and information specifically requested by the eligibility specialist may be extended.

(2) Exceptions may also be granted for non-payment of the member's portion of the insurance premium.

Stat. Auth.: ORS 735.734 & 735.720 - 35.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0090

Enrollment In Health Benefit Plans

(1) An applicant in the individual market must have applied for health benefit plan coverage and have notified FHIAP of enrollment by the first of the month following 120 days from date on the notice of eligibility determination letter. Extensions to certificates of eligibility will be granted only if the applicant has contacted a health insurance carrier or insurance agent within the first 30 days after approval. A member, once enrolled in the individual market, is required to move to an employer-sponsored health benefit plan if one becomes available with an employer contribution in accordance with ORS 735.724(5), and the plan meets the applicable eligibility criteria of OAR 442-004-0050.

(2) Except for the criteria of OAR 442-004-0050(2)(f)-(g), applicants who have an employer-sponsored health benefit plan available through an employer have 12 calendar months to enroll in that plan and must enroll in that plan unless it does not meet the benchmark.

(3) An otherwise eligible FHIAP member may enroll in an employer-based group health benefit plan, provided it meets the benchmark, as follows:

(a) In a new employer-sponsored health benefit plan coverage at the time it is offered;

(b) As a new employee during the initial enrollment;

(c) As a late-enrollee if allowed into the plan;

(d) During any open enrollment period.

(4) FHIAP will provide premium reimbursement payments in the employer-sponsored health benefit plan market. The subsidy payments may be payable to:

(a) The member only or member's employed spouse from whose pay check the premium is being deducted; or

(b) Dual payees — the member or member's employed spouse and the employer; or

(c) The employer if satisfactory accounting arrangements are made between FHIAP and the employer.

(d) Any parent or guardian who covers a member child on their insurance.

(5) In the employer-sponsored health benefit plan market, the member must provide at a minimum monthly verification of coverage, premium deductions, and employer contribution within 60 days from the date of the last subsidy payment.

(6) If not required to enroll in an employer-sponsored health benefit plan available through an employer the member may use the subsidy to purchase selected health benefit plans offered by a FHIAP-certified carrier. The health benefit plan selections will be based on the lower cost options offered by the FHIAP-certified carriers in the member's geographic area. The selection options and specific criteria will be listed in literature FHIAP will provide to the member.

(7) The member may combine an employer-sponsored health benefit plan, an individual health benefit plan from a FHIAP-certified carrier, and OHP or other qualifying health benefit plan coverage to cover all eligible members of the family, as long as no member is enrolled in both FHIAP and any other coverage simultaneously.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0110

Redetermination

(1) An application for redetermination form developed by the Board will be used to determine continued eligibility and subsidy level.

(2) Redetermination is done at least every 12 months after the date of original eligibility determination.

(3) FHIAP will send members an application for redetermination at least 60 calendar days before their eligibility ends. The application for redetermination will be mailed to the last known address of the member.

(4) FHIAP will redetermine eligibility following the rules for applicants in OAR 442-004-0050 and 442-004-0060. If at redetermination an applicant enrolled in an employer-sponsored plan meets all the eligibility criteria with the exception of their employer-sponsored plan no longer meeting the benchmark, that applicant and all family members enrolled in the employer-sponsored plan will be required to enroll in an individual market plan that meets the benchmark.

(5) The FHIAP member has 45 calendar days from the date on the redetermination application letter to return the application to FHIAP. If the Board does not receive the completed redetermination application within 30 days from the date it mails the redetermination application, the Board will mail a "15-day notice" to the FHIAP member advising that only 15 days remain in which to complete and submit the redetermination application. If the redetermination application is not postmarked or received within 45 days from the original date of mailing, the application will be denied and subsidy will end.

(6) FHIAP has 30 calendar days to take action on the Redetermination Application. The action may be approval, denial, or a request for further information from the applicant in accordance with OAR 442-004-0080(7).

(a) When further information is requested by FHIAP, the applicant has 45 calendar days following the date of the request to provide the additional information. If the information requested by FHIAP is not received within 30 calendar days from the date of the request, a "15-day notice" will be mailed to the member advising that only 15 days remain in which to provide the additional information. If a member does not provide all requested information within 45 days from the original date of request for further information, the redetermination application is denied and subsidy will end.

(b) Once a member has been denied because they failed to respond to the request for further information, the member must make a new reservation request to FHIAP to be considered for FHIAP eligibility in the future.

(7) If a member is denied continued eligibility, FHIAP will notify the member in writing of the following:

(a) The reason for the denial and its corresponding citation whether rule or statute or both;

(b) The effective date of the action;

(c) A phone number to call to ask questions;

(d) Appeal rights.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0115

Member Reporting

(1) Members must report changes in circumstance to FHIAP within 10 calendar days of their occurrence by either calling FHIAP or notifying FHIAP in writing either by mail or fax. These circumstances include the following:

(a) Change of Name;

(b) Change in Employers;

(c) Changes to family composition including death, divorce, any family member becoming a ward of the state or being incarcerated for more than 30 continuous days;

(d) Change of home or mailing address, even if temporarily away (more than 30 days);

(e) If any FHIAP member drops health benefit coverage;

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- (f) Obtaining different or additional health benefit coverage;
- (g) Any family member becomes ineligible for health benefit plan;
- (h) Change in employer contribution for FHIAP members receiving employer-sponsored group health benefit coverage;
- (i) Obtaining OHP. If a member enrolled in an employer-sponsored plan chooses to enroll in OHP Plus, FHIAP and the OHP will assist in facilitating this process.
- (j) Employer-sponsored health insurance becoming available to a member enrolled in the individual market as stipulated in OAR 442-004-0090(1)(a).

(2) Failure to report any of the above may result in termination from the program or an overpayment.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0117

Audits

(1) The Board may conduct audits on a selective or random basis to determine whether it has correctly followed statutes, rules, policies and procedures such that eligibility is correctly determined.

(2) As a result of an audit the Board may determine that a member or former member is or was ineligible for a FHIAP subsidy or is or was ineligible for a FHIAP subsidy at the level determined. The member may be terminated retroactively, or the subsidy level may be corrected retroactively.

(3) An audit determination may result in a determination that an overpayment or underpayment was made to or on behalf of a member or former member.

(4) If the Board requests additional information or documentation to verify information during the audit process, the member or former member must provide such information or documentation.

(a) The Board may verify any facts affecting eligibility, benefit levels or any previously reported information.

(b) The Board may deny an application or end any subsidy payment if requested verification is not provided.

(5) The Board may require a member to provide anew the same information as required by OAR 442-004-0050 and 442-004-0080.

(6) The Board will request additional information or documentation by a request for information letter. The member has 30 days from the date of the request to submit the information or documentation. If the information is not received within 30 days, the member will be terminated as provided in OAR 442-004-0120.

(7) If a member fails to cooperate with the Board in conducting its audit, the member will be terminated as provided in OAR 442-004-0120.

(8) If, as a result of an audit, the Board makes a determination regarding eligibility, level of subsidy, or any other matter that differs its original determination, the Board will notify the member in writing, of the reason for the change or denial of subsidy payments, the effective date of the Board's action, and the member's appeal rights.

Stat. Auth.: ORS 735.734 & 735.720, 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0120

Member Termination

Approval for a FHIAP subsidy is valid for 12 months, unless a completed redetermination application is approved for continued subsidy. The member's enrollment in FHIAP may be terminated when any of the following occurs:

(1) Payment of the member's share of health benefit plan premiums is not postmarked by the date stipulated in correspondence from FHIAP;

(2) The member is no longer a resident of Oregon;

(3) The member terminates or is terminated from the member's health benefit plan and fails to notify FHIAP;

(4) The health benefit plan that covers the eligible child of any member terminates or is terminated, and the member does not replace the eligible child's health benefit plan within 120 calendar days from the date the Board notifies the member to replace the child's coverage.

(5) The member is determined to be ineligible at redetermination.

(6) The member enrolls in OHP and fails to terminate as described in OAR 442-004-0050(4)(b).

(7) The member fails to report a change in circumstances as described in OAR 442-004-0115.

(8) In the employer-sponsored health benefit plan market, the member fails to provide monthly verification of coverage, premiums, and

employer contribution within 60 days from the date FHIAP requests such documentation.

(9) The member fails to pay an overpayment amount as per OAR 442-004-0130(8).

(10) The member fails to return their redetermination application within 45 days from the date it was mailed to them.

(11) The member failed to submit required or requested information or submitted inadequate or unclear information such that the Board cannot make an eligibility determination or such that the Board makes an incorrect eligibility or level of subsidy determination.

(12) The Board erroneously granted eligibility to a member when eligibility should have been denied and the Board discovers the error during an audit of the member's file.

(13) The member commits misrepresentation with respect to the FHIAP program. Any member who commits material misrepresentation will be ineligible to reenroll in FHIAP at any time in the future.

(14) A member enrolled in the individual market fails to enroll in the employer sponsored health benefit plan when the plan meets the benchmark and there is an opportunity for them to enroll as described in OAR 442-004-0050(2)(e).

Stat. Auth.: ORS 735.734 & ORS 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0130

Overpayments

(1) An overpayment may result from administrative error, member error, or misrepresentation.

(2) Any overpayment amount is a debt owed to the State of Oregon and is subject to collection.

(3) An overpayment is considered to be the fault of the member if it is caused by misunderstanding or unintended error by the member. Examples of member error include, but are not limited to, instances where the member intentionally or unintentionally:

(a) Did not provide correct or complete information to FHIAP;

(b) Did not report changes in circumstances to FHIAP;

(c) Misused a subsidy payment.

(4) An administrative error overpayment is caused by any of the following circumstances:

(a) FHIAP committed a calculation, procedural, or typing error that was no fault of the member;

(b) FHIAP failed to compute or process a subsidy payment correctly.

(5) The FHIAP member is having the health insurance premium subsidized by another state government program, such as, but not limited to OHP, and such subsidy results in a double payment for the same health insurance premium.

(6) The FHIAP member is currently enrolled in other health insurance coverage, including simultaneous receipt of FHIAP subsidized health insurance plan benefits and receipt of benefits from any part of the OHP.

(7) FHIAP will mail notification of overpayments to the member. This written notice shall:

(a) Inform the member of the amount of and the reason for the overpayment;

(b) Inform each liable adult that they must elect a method of repayment;

(c) Inform the member of what action the Board will take to collect the overpayment; and

(d) Inform members of their appeal rights.

(8) The Board will collect overpayment amounts in one lump sum if the member is financially able to repay the overpayment amount in that manner. If the member is financially unable to pay the amount due in one lump sum, FHIAP will accept regular installment payments in one or more of the installment methods listed below. Any former FHIAP members wishing to re-apply to FHIAP who owe a debt to FHIAP must, in addition to meeting the eligibility criteria in OAR 442-004-0050, either have their debt to FHIAP paid in full or have one or more of the following payment methods in place:

(a) A minimum of \$10 per month or the amount necessary to collect the overpayment amount in one year, whichever is greater; or

(b) An offset against any future monthly subsidy payment in the amount necessary to collect the overpayment amount in one year.

(9) If FHIAP is unable to recover the overpayment amount from the member in keeping with OAR 442-004-0130(8) above;

(a) FHIAP may, with any remaining balance not collected in full within one year, renegotiate or refer the balance to the Department of Revenue

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or another outside agency for collection. If an account is referred to an outside agency for collection, any expenses incurred for collection will be added to the member's amount due.

(b) FHIAP may file civil action to obtain a court ordered judgment for the amount of the debt. The Board may also assert a claim for costs and fees associated with obtaining a court judgment for the debt. When a judgment for costs is awarded, the Board will collect this amount in addition to the overpayment amount, using the methods of recovery allowable under state law and administrative rule.

(10) If the member submits an appeal request, FHIAP will not continue any attempts at collection until the conclusion of the appeal.

(11) If the appeal decision is in the member's favor, FHIAP must refund to the member any money collected to recover the overpayment amount.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0140

Fraudulent Misrepresentation

(1) FHIAP may investigate any applicant, member or former member for misrepresentation in obtaining subsidy benefits. Such investigations may be through random file audits or by management request.

(2) FHIAP may ask appropriate legal authorities to initiate civil or criminal action under Oregon laws when, in FHIAP's judgment, available evidence warrants such action.

(3) FHIAP may issue an intent to take disciplinary action against a member by giving notice of the opportunity for a contested case hearing.

(4) When a finding is made that an applicant or member has committed misrepresentation:

(a) The member is terminated from FHIAP and ineligible to re-enroll in FHIAP;

(b) The member is liable for repayment to the Board the full amount of overpayment the Board has established, regardless of any restitution amount ordered by a court;

(c) The applicant or member is liable for any civil penalty set by the Board up to a statutory limit of \$1,000.

Stat. Auth.: ORS 735.734, 735.740, & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0150

Appeals

(1) All notifications of decisions and determinations made by FHIAP will inform the applicant or member of appeal rights and outline the steps to be taken to file an appeal.

(2) An applicant may appeal any decision made or action taken by FHIAP.

(3) To appeal a decision or action, the applicant or member must advise FHIAP in writing of their desire to appeal within 21 days of the date on the notice or action. The 21 days will be established using the postmark on the envelope containing the appeal letter.

(4) The letter of appeal must include the reasons for the appeal and the reasons must be based on the notification addressed in subsection 1 of this section and be relevant to the information already submitted by the applicant.

(5) If necessary during the appeal process, FHIAP may request additional information. If further information is requested, the appellant has 15 calendar days from the date on the request to provide the additional information. If the information requested by FHIAP is not postmarked within 15 calendar days from the date on the request, the decision being appealed will be upheld.

(6) Once the Board has made a decision and notified the applicant of the decision, the applicant has the right to request a hearing on the Board's decision on the appeal.

Stat. Auth.: ORS 735.734 & ORS 735.720 - ORS 735.740

Stats. Implemented: ORS 735.720 - ORS 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04

442-004-0160

Hearings

(1) Any applicant may request a hearing on the Board's decision on an appeal.

(2) To receive a hearing, the hearing request must be in writing, signed by either the applicant or their attorney and be postmarked no later than 21 calendar days following the date of the appeal decision notice. The 21 days will be established using the postmark on the envelope containing the appeal decision notice.

(3) The letter requesting a hearing must include the reasons for the hearing and be relevant to the information already submitted by the applicant.

(4) The reasons for a hearing request shall be limited to the issue(s) cited in the appeal decision notice.

(5) The Board will conduct a contested case hearing pursuant to ORS 183.413 to 183.538.

(6) Once a hearing is requested, FHIAP will not pursue collection of any alleged overpayment until the Board has issued a final order affirming the overpayment.

Stat. Auth.: ORS 735.734 & ORS 735.720 - ORS 735.740

Stats. Implemented: ORS 735.720 - ORS 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02

Oregon Economic and Community Development Department Chapter 123

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Rules Amended: 123-027-0040, 123-027-0070, 123-027-0106, 123-027-0166

Subject: This filing is intended to make permanent the temporary rules filed September 15, 2004. The Department is amending this division to incorporate a definition of what is a new project, correct text references, clarify dates by which grants may be available to recipients.

The Marine Navigation Fund rules provided procedures, standards and criteria for Oregon ports to receive Federal funding for dredging and dredging-related projects and for non-federal projects that may not qualify for federal funding but qualify under an expanded set of criteria. The 2003 legislature provided funds for non-federal projects for the first time and with that funding provided more detailed requirements.

Rules Coordinator: Tawni Bean—(503) 986-0149

123-027-0040

Definitions

For the purposes of these rules, the following terms will have the following definitions, unless the text clearly indicates otherwise:

(1) "Department" means the State of Oregon Economic and Community Development Department.

(2) "Director" means the Director of the Economic and Community Development Department.

(3) "Federally authorized project," means a project that has been authorized or qualifies for federal funding from the United States Army Corps of Engineers.

(4) "Non-federal project" means a navigation project that is eligible under these rules but does not qualify for federal funding from the United States Army Corps of Engineers.

(5) "Fund" means the Marine Navigation Improvement Fund.

(6) "Project" means studies, necessary permits, dredging, acquisition, modification and maintenance of dredge disposal sites and construction of a new navigation improvement project that is sponsored by a port and is eligible for assistance from the Fund. A project can be either a federally authorized project or a non-federally authorized project.

(7) "Non-Federal Share" means that portion of a project cost not paid for by the United States Army Corps of Engineers.

(8) "Port" means a port incorporated under ORS Chapter 777 or 778, and may be known as a "port authority" or "port district."

(9) "State of Oregon" means State of Oregon government departments or agencies.

(10) For the purpose of ORS 777.267(1)(b) a "New" Navigation Improvement Project means those non-federal improvement projects that directly support federally authorized navigation improvement projects. In order for construction and support activities to be considered new, the construction activities must go beyond previously authorized levels of

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improvements such as deeper channel depths or wider breadth of area being served. However, "New" Navigational Improvements does not include improvements that go beyond the federal levels of service such as channel depths deeper than the federally authorized depths of the federally authorized navigation improvement project.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267
Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f 10-25-04, cert. ef. 11-8-04

123-027-0070

Approval and Award

(1) The Department and the Port will execute a contract prior to disbursement of moneys from the Fund. The contract will be in a form and content as provided by the Department.

(2) Payments from the Fund will be disbursed in accordance with the executed contract.

(3) The Port must provide the Department with a written report, records, and detailed accounting of costs in the format required by the Department:

- (a) Within 30 days following the close of each federal fiscal year;
- (b) Within 90 days following final completion of a project.
- (4) Any amount disbursed from the Fund and not used for a project must be returned to the Department.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267
Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f 10-25-04, cert. ef. 11-8-04

123-027-0106

Project Eligibility

Non-federally authorized projects that meet the following criteria are also eligible for assistance from the Fund:

- (1) The project is listed in a Port's business or strategic plan;
- (2) The project is ready to begin in the biennium for which funding is requested;

(3) The project is a new water project that directly supports, or provides access to, a federally authorized navigation improvement project or a federally authorized navigation channel; and

(4) The project meets the criteria of a freight project, or a commercial/recreation project:

(a) Freight projects are those that facilitate transportation for at least 5,000 tons of freight or cargo annually;

(b) Commercial/recreation projects support at least 1,000 use days annually as evidenced by information from the State Marine Board, the Ports Reporting System, the U.S. Coast Guard, or other similar source of reliable data, or be necessary to support the operation of at least one tour boat.

(5) Navigation facilities that can't meet the criteria listed in sections

(4) may still qualify for funding if:

(a) The proposed improvement project is designed to facilitate usage to a level that exceeds the criteria in subsection (4); or

(b) Usage of the proposed improvement project is reasonably forecasted to meet the criteria in subsection (4) within the first two years of operation and usage is forecasted to exceed the minimum criteria thereafter.

Stat. Auth.: ORS 285.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267
Hist.: EDD 14-2002, f. & cert. ef. 6-21-02; Renumbered from 123-027-0100 by EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f 10-25-04, cert. ef. 11-8-04

123-027-0166

Funding

(1) Funding for projects will be limited to funds appropriated by the Legislative Assembly.

(2) Projects eligible under section 0106 of this rule may be awarded loan or grant funding of up to the amount of the local share.

(3) Projects eligible under 0106(4) may be awarded loan or grant funding of up to 75 percent of the project cost. A 25 percent local match is required. In-kind services from the Port may be no more than 10 percent of the total project cost.

(4) Projects eligible under 0106(5) may be awarded loan or grant funding of up to 50 percent of the project cost. A 50 percent local match is required. In-kind services from the Port may be no more than 10 percent of the total project cost.

(5) The port must secure and be able to provide upon request, a land use compatibility statement from the appropriate jurisdiction(s) for the project.

(6) Interest rates will be determined during the financial review. Loan term will not exceed 25 years.

(7) If money is still available in the Fund and a loan is not feasible due to the financial hardship of the port, grants may be available after September 1, 2004. Grants may be awarded after that date if at least one of the following circumstances exists:

(a) Job creation and/or retention will be a direct result of the project;

(b) There is an urgent need for environmental remediation and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project;

(c) The project deals with critical public safety issues and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project; or

(d) There is imminent threat that the Port will lose permits and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project.

Stat. Auth.: ORS285A.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267
Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f 10-25-04, cert. ef. 11-8-04

Oregon Public Employees Retirement System Chapter 459

Adm. Order No.: PERS 24-2004

Filed with Sec. of State: 10-18-2004

Certified to be Effective: 10-18-04

Notice Publication Date: 2-1-04

Rules Adopted: 459-080-0200

Subject: This new rule implements and clarifies provisions of ORS 238A, which establishes the Oregon Public Service Retirement Plan (OPSRP). The rule's provisions proceed from the statutory directive that earnings and losses be posted to individual accounts in the OPSRP Individual Account Program (IAP) at least annually. The rule establishes that in no event will earnings or losses be posted to individual accounts unless and until the contributions are received and matched to the corresponding member record. Once matched, contributions will be posted to the individual account as of the first of the following month, and adjusted thereafter at least as often as required in statute.

Rules Coordinator: David K. Martin—(503) 603-7713

459-080-0200

IAP Account Adjustments for Earnings or Losses

(1) Earnings and losses on employee, employer, and rollover contributions under the OPSRP Individual Account Program ("IAP") will be posted at least annually, in accordance with ORS 238A.350(1). In no event will earnings or losses be posted to individual accounts until funds are actually received by PERS and have been successfully matched to the corresponding wage and contribution record. Once contributions have been received and matched, the effective date for posting these contributions shall be the first of the following calendar month. Accounts will be adjusted at least annually thereafter to reflect any net earnings or losses and to pay reasonable administrative expenses. This effective date applies to all contributions, whether for a current period or those sent as adjustments for prior periods.

(2) When a member requests a withdrawal of the member's employee, rollover and employer accounts under ORS 238A.375, those accounts will be adjusted to reflect any net earnings or losses and to pay reasonable administrative expenses only through the end of the month in which the request for withdrawal is received, regardless of when the payment is issued.

(3) The provisions of this rule are effective January 1, 2004.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.350
Hist.: PERS 19-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-25-04; PERS 12-2004, f. & cert. ef. 5-19-04; PERS 24-2004, f. & cert. ef. 10-18-04

Oregon State Marine Board Chapter 250

Adm. Order No.: OSMB 7-2004(Temp)

Filed with Sec. of State: 11-8-2004

Certified to be Effective: 11-8-04 thru 2-28-05

Notice Publication Date:

Rules Amended: 250-025-0020

ADMINISTRATIVE RULES

Subject: Work is scheduled to begin in November of 2004 and run through the construction window allowed by the Oregon Department of Fish and Wildlife. The sediment cap is being constructed in response to a Department of Environmental *Quality Record of Decision* (dated August 1999), the *Rhodia Suttle Road Sediment Area Additional Measures Study* (dated September 2002) and the *Explanation of Significant Differences* (dated December 17, 2002). The Division of State Lands requested the Marine Board to initiate rule-making to close and/or restrict public use of the site during the construction phase in order to protect the remedial work and sediment cap from interference or damage. DSL is requesting a rule to close the portion of the leasehold where the sediment cap is to be installed to all anchoring, grounding, and to all vessels that are equipped with a propeller or motor of any kind during the construction phase. The safety of the sediment cap, boaters, and construction workers needs to be safeguarded by prohibiting boats from entering the area. Failure to act promptly will result in serious prejudice to the public interest or the interests of the parties concerned.

Rules Coordinator: Jill E. Andrick—(503) 373-1405, ext. 243

250-025-0020

Scope

This division contains temporary rules for boat operations in areas where a specific event such as waterway construction may necessitate special restrictions or may require established rules to be amended for a period of time. When the need is ongoing a permanent rule will be adopted and incorporated into the applicable Division of OAR Chapter 250.

(1) Temporary work area: All state owned submerged or submersible lands in the Oregon Slough of the Columbia River in Section 32, Township 2 North, Range 1 East, Willamette Meridian, Multnomah County, Oregon, more particularly described as follows:

Commencing at the northwesterly corner of that tract of land described in a Bargain and Sale Deed to RHODIA, INC., recorded as Document No. 98028586, Multnomah County Deed Records; Thence, along the northeasterly line of said tract, S 47°46' E, 513.54 feet to the northwest corner of the Alexander Brown Donation Land Claim; Thence, along the north line of said claim S 48°30' E, 621.63 feet to the POINT OF BEGINNING of the TEMPORARY WORK AREA being described herein; Thence, N 29°58'25" E, 127.15 feet; Thence, S 73°37'02" E, 161.61 feet; Thence, S 62°44'22" E, 499.35 feet; Thence, S 16°22'58" E, 180.51 feet; Thence, S 29°58'25" W, 253.16 feet to the northeasterly line of said tract; Thence, along said northeasterly line, N 56° W, 135.19 feet; Thence, continuing along said northeasterly line, N 61°15'00" E, 5.15 feet; Thence, N 29°58'25" E, 227.76 feet; Thence, N 62°44'22" W, 461.47 feet; Thence, S 29°58'25" W, 133.84 feet to the northeasterly line of said tract; Thence, along said northeasterly line, N 48°30' W, 142.88 feet to the POINT OF BEGINNING as marked.

(2) This area of land contains 3.18 acres (138,333 sq. ft.), more or less.

(3) The intent of this description is to describe a temporary work zone that surrounds the limits of the sediment cap location, as shown on Exhibit D.

(4) Bearings based on Document No. 98028586, Multnomah County Deed Records.

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented:

Hist.: OSMB 6-2004, f. & cert.ef. 10-14-04; OSMB 7-2004(Temp), f. & cert. ef. 11-8-04 thru 2-28-05

Oregon Watershed Enhancement Board

Chapter 695

Adm. Order No.: OWEB 4-2004

Filed with Sec. of State: 11-2-2004

Certified to be Effective: 2-1-05

Notice Publication Date: 6-1-04

Rules Adopted: 695-005-0010, 695-005-0020, 695-005-0030, 695-005-0040, 695-005-0050, 695-005-0060, 695-005-0070, 695-005-0080, 695-010-0010, 695-010-0020, 695-010-0030, 695-010-0040, 695-010-0050, 695-010-0060, 695-010-0070, 695-010-0080, 695-010-0090, 695-010-0100, 695-015-0020, 695-015-0030, 695-015-0070, 695-015-0130, 695-025-0090, 695-025-0120, 695-025-0140, 695-030-0050, 695-030-0060, 695-030-0100, 695-035-0010, 695-035-0020, 695-035-0030, 695-035-0040, 695-035-0050, 695-035-0060, 695-035-0070, 695-050-0010, 695-050-0015, 695-050-0020, 695-050-0025, 695-050-0030, 695-050-0035, 695-050-0040, 695-050-0045, 695-050-0050

Rules Amended: 695-001-0000, 695-001-0005

Rules Repealed: 695-020-0010, 695-020-0020, 695-020-0030, 695-020-0040, 695-020-0045, 695-020-0050, 695-020-0051, 695-020-0052, 695-020-0053, 695-020-0054, 695-020-0055, 695-020-0060, 695-020-0070, 695-020-0080, 695-020-0090, 695-020-0092, 695-020-0093, 695-020-0094, 695-020-0095, 695-020-0096, 695-020-0097, 695-020-0098, 695-020-0100, 695-020-0105, 695-020-0110, 695-025-0010, 695-025-0015, 695-025-0020, 695-025-0025, 695-025-0030, 695-025-0035, 695-025-0040, 695-025-0045, 695-025-0050, 695-030-0010, 695-030-0020, 695-030-0030

Subject: OWEB has restructured and amended its grant rules to provide clarity, consistency and transparency for its grantmaking program. The agency name, dates, citations and other information was updated. New provisions were added that lay out the evaluation criteria, regional review team process, and staff recommendation process for watershed restoration projects in Division 10. New and existing administrative and fiscal requirements for grantees were added in Division 5.

Rules Coordinator: Bonnie King—(503) 986-0181

695-001-0000

Notice Rule

Prior to adoption, amendment or repeal of any rule, the Oregon Watershed Enhancement Board 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 before the effective date of the intended action.

(2) By mailing a copy of the notice to persons on the Oregon Watershed Enhancement Board's mailing list established pursuant to ORS 183.335(8) at least 28 days prior to the effective date.

(3) By mailing or furnishing a copy of the notice at least 28 days prior to the effective date to:

(a) Organizations:

(A) Watershed Councils and Watershed Interest Groups;

(B) Soil and Water Conservation Districts;

(C) Such other environmental and resource interests who have expressed an interest in the Oregon Watershed Enhancement Board Program; and

(D) The Nine Federally Recognized Indian Tribes.

(b) State Agencies:

(A) Agriculture, Department of;

(B) Environmental Quality, Department of;

(C) Fish and Wildlife, Department of;

(D) Forestry, Department of;

(E) Water Resources Department;

(F) Geology and Mineral Industries, Department of;

(G) Governor's Office, Assistant for Natural Resources;

(H) Health Division, Department of Human Resources;

(I) Land Conservation and Development;

(J) Parks and Recreation Department;

(K) Department of Transportation;

(L) Oregon Department of Education;

(M) State Lands, Department of; and

(N) Oregon State University Extension Service Watershed Group.

(c) Federal Agencies:

(A) Bureau of Land Management;

(B) Corps of Engineers;

(C) Bureau of Reclamation;

(D) Forest Service;

(E) Environmental Protection Agency;

(F) Natural Resources Conservation Service;

(G) NOAA Fisheries;

(H) The US Fish and Wildlife Service;

(I) The Bonneville Power Administration;

(J) The Northwest Power and Conservation Planning Council; and

(K) Other public agencies with similar resource responsibilities or who have expressed an interest in the OWEB Program.

(d) News Media.

(4) By mailing or furnishing a copy of the notice at least 49 days prior to the effective date to the appropriate legislators under 183.335(15).

Stat. Auth.: ORS 183

Stats. Implemented: ORS 541.345 - ORS 541.395

Hist.: GWEB 2-1987(Temp), f. & ef. 8-27-87; GWEB 4-1987, f. & ef. 10-20-87; GWEB 1-1997, f. & cert. ef. 10-29-97; OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

ADMINISTRATIVE RULES

695-001-0005

Model Rules of Procedure

The *Oregon Attorney General's Model and Uniform Rules of Procedure*, January 2004 edition, were adopted by the Oregon Watershed Enhancement Board on September 14, 2004 and will be followed in all matters except where a different procedure is prescribed by statute.

Stat. Auth.: ORS 183, ORS 541 & Ch. 734, OL 1987

Stats. Implemented:

Hist.: GWEB 1-1987, f. & ef. 8-27-87; GWEB 1-1989, f. & cert. ef. 3-9-89; GWEB 1-1992, f. & cert. ef. 6-29-92; OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-005-0010

Purpose

These rules guide the Oregon Watershed Enhancement Board in accepting applications and considering grant proposals for funding under the provisions of ORS 541.350, et seq. The regular Board grant program includes grants for watershed restoration, monitoring, watershed assessment and action planning, watershed council support, watershed education and outreach, land and water acquisition, and small grants. In addition, the Board may from time to time, as funds are available, request proposals for technical assistance and research.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-005-0020

Definitions

(1) "Board" means Oregon Watershed Enhancement Board.

(2) "Director" means the Executive Director of the Oregon Watershed Enhancement Board.

(3) "Grant Agreement" is the legally binding contract between the Board and the grant recipient. It consists of the conditions specified in these rules, the notice of grant award, special conditions to the agreement, a certification to comply with applicable state and federal regulations, the project budget and the approved application for funding the project.

(4) "Regional Review Team" is a team, appointed by the Director, of designated personnel with regional knowledge and interdisciplinary expertise drawn from agencies represented on the Board and other entities to evaluate regional grant applications. The Director may change the composition of regional review teams.

(5) "Partners" are non-governmental or governmental persons or entities that have committed funding, expertise, materials, labor, or other assistance to a proposed project.

(6) "Match" is any contribution to a project that is non-Board funds. Match may include:

(a) Cash on hand or cash that is pledged to be on hand prior to commencement of the project;

(b) Secured funding commitments from other sources;

(c) Pending commitments of funding from other sources. In such instances, Board funding will not be released prior to secured commitment of the other funds. Pending commitments of the funding must be secured within 12 months from the date of the award; or

(d) The value of in-kind labor, equipment rental and materials essential to the project, based on local market rates.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-005-0030

Application Requirements

(1) Applications must be submitted on the most current form prescribed by the Board. Current applications are available on the Board's website. An explanation must accompany the application if any of the information required on the application cannot be provided. In addition to the information required in the application, and the required attachments, an applicant may submit additional information that will aid the Board in evaluating the project.

(2) All applicants for Board grants shall supply the following information:

(a) Names, physical and email addresses, fax and telephone numbers of the applicant contact person(s) and the fiscal officer(s);

(b) Name and address of involved landowner(s);

(c) The name and location of the proposed project. The location shall be described in reference to the public land survey, latitude and longitude using decimal degrees, North American Datum 1983, county, watershed, and stream mile, if appropriate;

(d) Estimated line item budget for the project including the sources and amounts of funding, and the amount of funding requested from the Board;

(e) Identification of specific project elements for which Board funds will be used;

(f) A list of any non-Board funds, services or materials available or secured for the project and any conditions which may affect the completion of the project;

(g) If the project is part of a multi-year project, and a new funding request continues a previously Board-funded activity, a description of the previous project accomplishments and results as well as an accounting of past expenditures and revenues for the project;

(h) Identification of volunteers and partners and the contribution they will make to the project;

(i) A project schedule including times of project beginning and completion; and

(j) Any information requested that is necessary to evaluate the project based on the evaluation criteria for that project type.

(3) All applicants shall demonstrate at least 25% match is being sought, on a form prescribed by the Board, based on the total Board grant request, at the time of application.

(4) All applications that involve physical changes or monitoring on private land must include a signature of approval of the landowner signifying their approval and the understanding that all monitoring information obtained on their property is public record. If the landowner's signature was not obtainable at the time of application, explain why. The landowner's signature will be required prior to release of the grant agreement if the application is approved for funding.

(5) Fiscal administration costs, which may include accounting, auditing, contract management and fiscal reporting expenses for the project, for a grant awarded by the Board may not exceed 10% of the total Board funds expended for the project.

(6) Applications will be considered complete as submitted. Clarification of information may be sought from the applicant during the evaluation process but additional, new information will not be accepted after the application deadline.

(7) Applicants are encouraged to submit requests for up to \$10,000 for watershed restoration projects to the Small Grant Team in their Small Grant Area, unless the project is not eligible for funding under the Small Grant Program or the Small Grant Program has no funds available at the time of application. Applicants may not submit the same proposal to both the Board and the Small Grant Team.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-005-0040

Application Processing

(1) The Board shall announce deadlines for submitting applications, except for the Small Grant Program.

(2) Project applications will be reviewed based on application completeness and the evaluation criteria adopted by the Board for each grant type in these rules.

(3) A regular grant applicant may be any person, tribe, watershed council, soil and water conservation district, not-for-profit institution, school, community college, state institution of higher education, independent not-for-profit institution of higher education, or political subdivision of this state that is not a state agency. A state agency or federal agency may apply for funding under this section only as a co-applicant with one of the other eligible entities. Any of these applicants or co-applicants may also serve as a fiscal agent for grants.

(4) The Board may require additional information to aid in evaluating and considering a proposed watershed project.

(5) The Board may use a regional review team or other technical team to review grant applications and make funding recommendations to the staff or Board.

(6) The Board may rank projects in selecting projects for funding.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-005-0050

Grant Agreement Conditions

(1) The Board will only enter into new agreements or amendments to existing agreements, exclusive of Small Grant agreements, with prior Grantees if all reporting obligations under earlier agreements have been met.

ADMINISTRATIVE RULES

(2) If the grant agreement has not been fully executed by all the parties within one year of Board approval, funding shall be terminated. The money allocated to the grant shall be available for reallocation by the Board.

(3) The Director or designee shall establish grant agreement conditions for each grant type. Grantees shall comply with all grant agreement conditions.

(4) The Grantee shall comply with all federal, state and local laws and ordinances applicable to the work to be done under the agreement.

(5) All project activities must demonstrate, to the extent possible, consistency with local community workforce and economic development plans and policies.

(6) Following project completion, equipment purchased with Board funds shall reside with any of the following: watershed council, soil and water conservation district, tribe, local government, state agency, institution of higher learning, or a school district. These entities will make the equipment available to others at no cost, other than nominal operation and maintenance costs.

(7) Upon notice to the Grantee in writing, the Director may terminate funding for projects not completed in the prescribed time and manner. The money allocated to the project but not used will be available for reallocation by the Board.

(8) The Grantee will account for funds distributed by the Board, using project expense forms provided.

(9) The Grantee will obtain the necessary permits and licenses from local, state or federal agencies or governing bodies and provide a copy to the Board.

(10) The Board may place additional conditions in the Grant Agreement as necessary to carry out the purpose of the watershed enhancement program. Such conditions may include:

(a) A commitment by the landowner for continued access for monitoring the project after completion;

(b) A commitment by the Grantee to maintain the project for a period of time as deemed appropriate by the Board;

(c) A commitment to supply future reports on the project as required;

(d) Such other conditions as the Board deems appropriate to the particular circumstances of the project.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-005-0060

Distribution of Funds

(1) The Board will not reimburse the Grantee for any expenditures incurred prior to the signing of the grant agreement by all parties, except for fees charged by an affected city or county for processing the required Land Use Information Sheet.

(2) The Director may withhold payments to a Grantee in a situation where there are significant and persistent difficulties with satisfying Board requirements.

(3) Prior to disbursement of Board funds, the Grantee must provide proof that the 25% required match, based on the total Board award, has been secured.

(4) Prior to disbursement of Board funds for projects involving private lands, the Board must receive a signed cooperative agreement between the landowner and the Grantee that, at a minimum, includes:

(a) Permission to access the private land, at times agreeable to the landowner, to implement the project, inspect the project, monitor the effectiveness of the project, or perform repairs or maintenance; and

(b) Identification of the party responsible for repairs and maintenance of the project.

(5) Funds shall not be disbursed until the Board receives satisfactory evidence that necessary permits and licenses have been granted and documents required by the Board have been submitted.

(6) Funds will be released upon presentation of a completed fund release request form accompanied by receipts or invoices, and proof of completion of specific work elements of the project as identified in the Grant Agreement.

(7) Advance funds may be released upon presentation of a detailed estimate of expenses for up to 120 days. Within 120 days of the date of the advance check, receipts or invoices for the advance must be submitted, a justification to extend the advance must be approved, or the unexpended advance funds must be returned to the Board. Additional funds will not be released until receipts for expenditures of previous fund releases are submitted, or an estimate of expenditures is approved by the Director or designee.

(8) The Board shall retain ten percent of project funds until the final report, as required in the grant agreement, has been approved. Final reports are due within 60 days of project completion. Any unexpended Board funds must be returned to the Board with the final report. Upon receipt of the final report, the Board shall have 90 days to approve the completed report or notify the Grantee of any concerns that must be addressed or missing information that must be submitted before the report is considered complete and reviewed for approval. Once the final report has been approved the final payment shall be promptly processed.

(9) All Grantees shall account for at least 25% in actual match, on a form prescribed by the Board, based on the total Board grant expenditures, upon project conclusion and final reporting.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-005-0070

Waiver of Rules

The Director or designee may waive the requirements of division 5, unless they are required by statute, for individual grants where doing so will result in more efficient or effective implementation of the Board's grant program. Any waiver granted shall be in writing and included in the permanent file of the individual grant for which the waiver was granted.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-005-0080

Periodic Rules Review and Program Evaluation

The Board shall review the grant program and rules at least once every five years and make changes as needed to carry out a high quality and effective program.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-010-0010

Purpose

The Board shall provide grants, as funds are available, for watershed projects that protect or restore watershed functions.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-010-0020

Definitions

(1) "Affected City and County" means any city or county within which all or part of a watershed enhancement project funded by the Board would be located.

(2) "Maintenance" means those activities and actions necessary to sustain the useful life of a constructed watershed improvement. Maintenance does not include those activities necessary to establish the improvement.

(3) "Non-Structural Methods" are those that rely on strategies other than the creation and installation of permanent structures, except livestock fencing, to meet the project goals.

(4) "Watershed Restoration Project" means a project that involves an on-the-ground element such as: riparian planting, fish habitat construction, wetland restoration, livestock grazing plans, water conservation projects utilizing the state Conserved Water Program, etc.

(5) "Watershed Function" means the hydrologic and geomorphic processes that support a healthy watershed ecosystem.

(6) "Watershed Health" means the condition of a watershed as measured by the ability of the watershed to capture, store and release water, and transport sediment and nutrients in order to provide clean water, high quality fish and wildlife habitat, and adequate streamflows to support instream uses.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-010-0030

Watershed Restoration Priorities

For grant applications to be funded by the Watershed Improvement Grant Fund, the following preferences will apply:

(1) Projects that address altered watershed functions affecting water quality, water flow volume and duration, and the production capacity for fish over projects that address site-specific land use problems where the greatest benefit is to a private resource or land.

ADMINISTRATIVE RULES

(2) Projects that include removal or remediation of human-caused alterations (roads, culverts, channelization, etc.) to improve water quality and/or fish habitat over projects that enhance naturally functioning systems.

(3) Projects that change land management practices to address the causes of chronic disturbances to the watershed over projects that address only symptoms of disturbance.

(4) Projects with direct evidence of collaboration between stakeholders and agencies over single-party projects.

(5) Projects focusing on upslope and upstream treatments over projects focusing on downslope and downstream treatments, unless the project addresses tidal-driven systems or addresses other specific issues (e.g. historic losses) that encompass whole watershed conditions.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-010-0040

Ineligible Project Types

The Board will not consider:

(1) A watershed improvement project that consists solely of construction of a water storage structure for an out-of-stream use not related to watershed restoration or protection; or

(2) A fish screening project eligible for funding through the Oregon Department of Fish and Wildlife's fish screening program; or

(3) A watershed improvement project constructed solely to comply with a state or federal agency enforcement order, legal judgment or mitigation requirement; or

(4) Routine project maintenance costs; or

(5) A water conservation project, unless there is a measurable instream flow benefit, groundwater benefit or water quality improvement.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-010-0050

Application Requirements

Applications must be submitted on the most current form prescribed by the Board. An explanation must accompany the application if any of the following information required under this section cannot be provided:

(1) Land use information from affected counties and cities as referenced in OAR chapter 695, division 50;

(2) A statement that required permits or licenses from federal, state, or local government will be applied for;

(3) A commitment from a state, federal or local agency to inspect the completed project work to ensure it complies with the funding requirements;

(4) A plan to monitor and evaluate project results including identification of responsible parties;

(5) A plan for operation and maintenance of the project for the projected life including identification of the responsible parties; and

(6) Additional information that will aid the Board in evaluating the project under OAR 695-010-0060.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-010-0060

Evaluation Criteria

(1) Project applications will be reviewed for compliance with the items in OAR 695-005-0030 and 695-010-0050.

(2) Watershed restoration projects funded from the Watershed Improvement Grant Fund must provide a public benefit through improved:

(a) Water quality;

(b) Fish or wildlife habitat; or

(c) Public information or education on a watershed function.

(3) Watershed restoration project proposals must meet the following criteria to be considered for funding by the Board:

(a) The project demonstrates sound principles of watershed management;

(b) The project uses methods adapted to the project locale;

(c) The project complies with state land use planning goals and is compatible with acknowledged comprehensive plans as required under ORS 197.180; and

(d) The project meets the requirements in the *Oregon Aquatic Habitat Restoration and Enhancement Guide*.

(4) Watershed restoration projects meeting the criteria established by subsection (1) above will be further evaluated on the basis of the extent to which the project:

(a) Is based on a watershed assessment or other analytical tool that identifies specific watershed health problems;

(b) Is part of a watershed action plan or other strategic plan that prioritizes subwatersheds or project types within subwatersheds;

(c) Clearly defines and addresses a watershed health problem or known limiting factors;

(d) Has clearly stated objectives and is likely to meet these;

(e) Will be implemented using a clearly defined method to address the problem;

(f) Provides educational opportunities or promotes public awareness of watershed enhancement benefits;

(g) Fits within the context of past and planned future restoration efforts in the watershed;

(h) Improves watershed function;

(i) Treats the causes of the identified problems, rather than treating symptoms;

(j) Encourages the use of non structural methods to enhance riparian areas and associated uplands;

(k) Includes funds or in-kind services from non-Board sources;

(l) Is proposed in the context of fish and wildlife species life stages, upland conditions and year-round watershed functions;

(m) Takes into consideration the quality of the watershed above and below the project area;

(n) Takes into consideration known potential future events that may affect the success of the project;

(o) Takes into consideration potential impacts to other properties and streams in the area;

(p) Is ready to be implemented; and

(q) Identifies and evaluates alternatives to address the identified problem.

(5) Watershed restoration projects shall also be evaluated based on the following administrative and fiscal criteria:

(a) The amount of the administrative costs relative to the project's fiscal management complexity;

(b) The applicant's past grant record with regard to timely project completeness, accounting and reporting as well as whether past projects were completed as proposed, using information provided by Board staff;

(c) The extent to which the personnel costs reflect the tasks involved in implementing the project;

(d) Whether the direct costs and match values reflect local market rates; and

(e) Whether the overall budget reflects the expected watershed health benefit.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-010-0070

Regional Review Process

(1) Prior to the regional review team meeting the regional review team:

(a) Shall receive each application, past evaluations for projects resubmitted in the current grant cycle, and an evaluation sheet to complete for each application;

(b) Is encouraged to visit proposed project sites to enhance the understanding of the proposal. Priority for visitations will be placed on acquisitions, complex projects, new types of projects and projects with a significant budget; and

(c) Shall read and score each application using the evaluation sheets provided. During this process, team members are encouraged to contact the applicants, Board staff, or other agency staff to clarify information in the application or to get expert review.

(2) At the regional review team meeting, the team shall:

(a) Review and evaluate each project individually based on how well the proposed project meets the criteria in 695-010-0060;

(b) Recommend the project as;

(A) Do fund;

(B) Do fund with conditions;

(C) Do not fund; or

(D) Defer to staff or the Board with an explanation, if there is a policy issue or budget issue that needs to be addressed by the Board prior to a funding decision; and

(c) Rank order all projects recommended for funding based on;

(A) How well the project meets the criteria established in 695-010-0030 and 695-010-0060;

ADMINISTRATIVE RULES

(B) The certainty of success, based on the organizational capacity of the applicant and the likelihood the project will meet its ecological objectives;

(C) The benefit to the *Oregon Plan for Salmon and Watersheds*, as evidenced by its expected benefits to watershed functions, fish habitat or water quality; and

(D) The project costs relative to the anticipated watershed health benefits.

(3) The project description, summary evaluation and funding recommendation for all projects, and the rank order of projects recommended for funding shall be forwarded from the regional review team to Board staff for their consideration. This information will be sent to all applicants within a region for their region and for all regions to the Board.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-010-0080

Staff Funding Recommendation Process

(1) Prior to the finalization of a staff recommendation to the Board, the staff may meet with a Board subcommittee to discuss projects with major policy or budget issues that need to be resolved prior to a final Board decision.

(2) Staff shall review the recommendations from each regional review team and make a statewide funding recommendation to the Board based on available resources for the grant period and type. The recommendation shall include any conditions placed on individual projects and may include proposed budget adjustments. The staff recommendation, as represented in the staff report to the Board, shall be sent to applicants and members of the Regional Review Teams at least two weeks before the Board meeting where funding decisions are to be made.

(3) Applicants may provide written or oral comment to the Board on the staff recommendation prior to the Board decision.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-010-0090

Board Funding Decision

(1) The Board may fund a project in whole or in part.

(2) Projects not funded may be resubmitted during application submission periods prescribed by the Board.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-010-0100

Grant Agreement Conditions

(1) The Grantee must submit a report at completion of the project describing the work done and placing it in its larger watershed context.

(2) The Grantee will monitor the long-term effectiveness of the project, and continue its maintenance, submitting periodic reports on a schedule set by the Board. All reports will be filed with the Board or at a location specified by the Board.

(3) The Grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the Director or designee prior to the beginning of any work proposed in the modification.

(4) The Director or designee will consider project modifications including expansion of funded projects with moneys remaining from the original project allocation if the purpose and intent of the amendment remains the same as the original project, the proposed activity is within the same watershed, and the modification would be compatible with acknowledged comprehensive plans.

(5) The Director or designee may authorize minor changes within the scope of the original project plan.

(6) The Grantee will allow Board members or designated representatives access to the project area at a mutually agreeable time to monitor and evaluate the project.

(7) The Grantee must submit as part of their final report a completed Oregon Watershed Restoration Reporting form, using the most current form available on the Board website.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-015-0020

Definitions

(1) "Watershed Education Project" means a project whose primary purpose is to communicate information about watersheds. It may be a workshop, demonstration project, a planned course of study, or the implementation of a public awareness strategy.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-015-0030

Education and Outreach Priorities

For grant applications to be funded by the Watershed Improvement Grant Fund, the following preference shall apply: Watershed and riparian education projects that provide education and awareness about watershed processes for landowners over projects that create curriculum materials.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-015-0070

Evaluation Criteria

Watershed Education projects shall be evaluated on the basis of the extent to which they:

(1) Further the broad goal of developing and maintaining healthy watersheds;

(2) Provide information on alternative management practices that support watershed enhancement efforts by landowners, watershed council members and other local groups;

(3) Raise awareness of the citizens of the State of Oregon;

(4) Teach about the long-term benefits of healthy watersheds;

(5) Have well-defined instructional goals and objectives;

(6) Have the potential for being accomplished;

(7) Apply learning strategies that are appropriate for the target audience; and

(8) Can be used at other locations without major modifications.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-015-0130

Special Watershed Educational Project Grants

The Board may:

(1) Solicit proposals for specific projects which meet the needs of the watershed enhancement program; and

(2) Provide grants to agencies or organizations for educational projects to increase public awareness of watershed enhancement principles or provide training in watershed management concepts or techniques.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-025-0090

Definitions

"Watershed Monitoring Project" means a project that identifies conditions in the watershed. It may be for the purpose of gathering baseline data on current conditions, for evaluation of the specific effects of management actions, or for comparing similar watershed components before and after a project.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-025-0120

Application Requirements

Applicants must demonstrate conformance with the following provisions:

(1) Demonstrate knowledge of state and/or federally accepted monitoring protocols;

(2) Provide assurance that an appropriate protocol will be used; and

(3) Acknowledge that the results will be available to a state database.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-025-0140

Evaluation Criteria

Watershed Monitoring projects will be funded on the basis of the extent to which they:

(1) Are developed in the context of the entire watershed;

ADMINISTRATIVE RULES

- (2) Follow appropriate protocols developed by the Board; and
- (3) Use the information to implement or direct projects to enhance or sustain the health of watersheds.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-030-0050

Definitions

(1) "Watershed Action Plan Project" means a project that identifies and prioritizes potential action that would benefit watershed conditions based on problems identified in a watershed assessment.

(2) "Watershed Assessment Project" means a project that systematically reviews existing information about watershed conditions and processes such as erosion rates, pollution sources, fish habitat conditions, riparian conditions, culvert fish passage problems, etc., and relates those conditions and processes to desired future conditions.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-030-0060

Assessment and Action Plan Priorities

For grant applications to be funded by the Watershed Improvement Grant Fund, the following preferences will apply:

(1) Watershed assessment projects that address whole basin conditions to focus restoration needs over single-function research projects; and

(2) Projects developed from a watershed-level assessment and analysis of conditions that includes an action plan for restoration or enhancement of watershed functions.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-030-0100

Evaluation Criteria

Watershed Assessment and/or Action plan projects will be funded on the basis of the extent to which they:

- (1) Are developed in the context of the entire watershed;
- (2) Follow appropriate protocols developed by the Board; and
- (3) Use the information to implement or direct projects to enhance or sustain the health of watersheds.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-035-0010

Small Grant Program

(1) The Oregon Watershed Enhancement Board (OWEB) may provide funding for a locally administered Small Grant Program from its Watershed Improvement Grant Fund. Funds may be allocated for the Small Grant Program in amounts and at times decided by the Board.

(2) The goals of the Small Grant Program are to:

(a) Support implementation of the Oregon Plan for Salmon and Watersheds.

(b) Support projects designed to improve water quality, water quantity, and fish and wildlife habitat. Such projects include, but are not limited to, those developed to implement Total Maximum Daily Loads (TMDLs), Agricultural Water Quality Management Area Plans, urban nonpoint source pollution management plans, and the Board of Forestry's Forestry Program for Oregon.

(c) Make funds available to local decisionmakers to address local priority resource concerns, habitat values, and watershed functions.

(d) Encourage landowner participation in watershed improvement by making funds available more quickly than is possible through OWEB's Regular Grant Program.

(e) Treat the source of watershed health problems through technically sound projects that use proven techniques from one of the six approved sources listed in OAR 695-035-0030(2), and that demonstrate benefits to aquatic species, wildlife, or watershed health across all land uses.

(f) Encourage partnerships among watershed councils, soil and water conservation districts (SWCDs), and tribes.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-035-0020

Small Grant Program Administered by Small Grant Teams

(1) The OWEB Board may award program grants to eligible Small Grant Teams to enable the Teams to administer a Small Grant Program within a Small Grant Area. A Small Grant Team must submit a program grant application to OWEB on a designated form at times designated by the OWEB Board to be eligible to receive a program grant to administer a Small Grant program.

(2) Small Grant Teams will invite in writing each soil and water conservation districts (SWCD) and watershed councils located partially or entirely within the Small Grant Area, and each tribe with reservation, tribal, aboriginal, or ceded lands, or usual and accustom sites located partially or entirely within the Small Grant Area to appoint one representative to a Small Grant Team. Participation on a Team is voluntary. A Small Grant Team must have at least two actively participating members to be eligible to allocate Small Grant funds. Each eligible Team may receive a program grant from OWEB to allocate Small Grants Project awards of up to \$10,000 for eligible watershed restoration projects consistent with local priority watershed concerns and eligible project types adopted by the team.

(3) Members of each Small Grant Team are encouraged to invite individuals with expertise in a watershed restoration discipline or other watershed restoration interests to consult with the Team on its priorities, program elements, and recommendations for project grant awards.

(4) The OWEB Board will establish Small Grant Areas for the Small Grant Program. The boundaries of the Small Grant Areas will be drawn based upon hydrologic boundaries, existing watershed restoration partnerships, and similarities in resource concerns. Only one Small Grant Team may administer a Small Grant Program in each Small Grant Area. A copy of the Small Grant Area map is available upon request from OWEB and can also be viewed on the OWEB website.

(5) A Small Grant Team may petition the OWEB Board to adjust the boundaries of Small Grant Areas. If a Team has not been formed in a Small Grant Area, an organization eligible to appoint a member to a Small Grant Team may petition the Board to adjust the boundaries of Small Grant Areas. Written approval from all Small Grant Teams affected, or if a Small Grant Team has not been formed, all entities eligible to appoint a member to the Small Grant Team in that area, is required before a boundary adjustment petition may be filed with the Board.

(6) The OWEB Board will consider all boundary-adjustment petitions once a biennium, at the time it considers reauthorizing Small Grant Program funds for the next biennium. The OWEB Board may choose to consider a boundary adjustment upon a valid motion by Board members, without petition by a Small Grant Team or organization that is an eligible Small Grant Team member. However, the OWEB Board will consult with affected Small Grant Teams, and if a Team has not been formed, eligible Team members in the area before considering the boundary adjustment. A decision by the OWEB Board to approve a boundary adjustment will consider one of the following:

(a) The current Small Grant Area boundaries fragment existing watershed restoration partnerships;

(b) The current Small Grant Area boundaries fragment hydrologically connected areas or ecologically similar landscapes in a way that would make setting local restoration priorities difficult; or

(c) The current Small Grant Area boundaries encompass many different limiting factors for water quality, water quantity, and fish and wildlife habitat. Adjusting boundaries would improve the ability of watershed restoration partners to focus their efforts on the limiting factors with which they have expertise.

(7) Prior to submitting a program grant application to OWEB, the Small Grant Team will adopt the following program elements that will be attached as part of the program grant application:

(a) Rules of operation for administration of the Small Grant Team and the Small Grant Program, including:

(A) Rules governing decision-making and membership;

(B) Application processing and project grant agreement procedures;

(C) Designation of a public contact, and a member with authority to sign project grant agreements on behalf of the Small Grant Team;

(D) Record keeping;

(E) Processes and criteria for recommending project grant awards;

(F) Processes for evaluating the technical feasibility of projects;

(G) Processes and formats for biennial reporting;

(H) Entities, in addition to councils, districts, and tribes, designated by the Small Grant Team as being eligible fiscal agents; and

(I) Application acceptance windows.

ADMINISTRATIVE RULES

(b) Priority watershed concerns to be addressed by the Small Grant Team;

(c) A list of project types most likely to effectively address the local watershed concerns adopted by the Small Grant Team. This list must be consistent with the list of eligible project types in OAR 695-035-0050(4). Teams wishing to add project types not on the list need to petition OWEB for their eligibility in their Small Grant Area. The proposed project type needs to demonstrate to the satisfaction of the OWEB Director a clear watershed benefit for the Small Grant Area. It must also be consistent with the team's adopted priority watershed concerns, and must be referenced to one of the six approved technical guidance sources listed in OAR 695-035-0030(2).

(8) The program elements adopted by the Small Grant Team will be included as an attachment to the program grant application to OWEB from the Small Grant Team. A program grant to a Small Grant Team to administer a Small Grant Program will not be awarded until the Team has adopted the required program elements.

(9) In identifying priority watershed concerns, the Small Grant Team will consider current information on the condition of the watershed and its limiting factors to support native fish and to meet water quality standards. The priority watershed concerns should be adopted with reference to documents addressing the limiting factors to: 1) Clean Water Act standards as identified in Total Maximum Daily Load Water Quality Management Plans and in Agricultural Water Quality Management Area Plans; and to 2) watershed assessments and action plans, other watershed analyses, the Oregon Forest Practices Act, and soil and water conservation district annual work plans and long-range business plans. Priority watershed concerns and the list of eligible project types adopted by the Small Grant Team will address the source of watershed health problems, and not the effects.

(10) Small Grant Teams may designate members of the Team as a Project Evaluation Committee to evaluate Small Grant Project applications in lieu of the entire Team. If established, this Committee will have equal representation from soil and water conservation district and watershed council Team members. The Team, or if designated, its Committee, will select applications to recommend for funding based on its priority watershed concerns, eligible project types, and the technical merits of the project. The Small Grant Team, or if designated, the Committee, is encouraged to invite technical experts to assist in the evaluation of proposed projects.

(11) Each Small Grant Team will develop application evaluation criteria that will be based on the questions asked in the application, as well as on additional evaluation considerations listed by teams in their operating procedures. Evaluation criteria will be attached to a Team's operating procedures. Teams will make available to applicants the evaluation criteria along with the Team's list of priority watershed concerns and eligible project types.

(12) Small Grant Teams will establish in their operating procedures two-week windows throughout the OWEB fiscal year during which they will receive applications. At a maximum, two-week windows will be open 12 times in the OWEB fiscal year, and teams or their designated committee will act upon complete applications within 30 days of their receipt. At a minimum, two-week windows will be open four times during the OWEB fiscal year, and teams or their designated committee will act upon complete applications within 30 days of the close of each application period.

(13) Small Grant Teams may write their own project grant agreements, using an OWEB-provided template, or they may forward the approved application and materials to OWEB for processing of the project grant agreement. The OWEB Director reserves the discretion to alter this arrangement as necessary.

(14) OWEB has 20 working days after receipt of these materials to verify that the approved application is consistent with the Team's local priorities and with OWEB's statute and administrative rules. Upon verification, and depending on the grant agreement arrangement made with OWEB, OWEB will either send an original project grant agreement, or will return a fully executed project grant agreement, to the project manager for the Grantee, listed in the project grant agreement. OWEB will keep the original project grant agreement on file, and the project manager for the Grantee will be responsible for, depending on the grant agreement arrangement with OWEB, securing signatures and providing copies to all signatories. Signatories to the OWEB project grant agreement will include the Grantee; a representative of the Small Grant Team; a representative of OWEB; and a Fiscal Agent for the Grantee, if different from the Grantee. A project grant agreement is not valid until all signatories to the agreement have signed. Project grant agreements must be signed within 90 days of the first signature on the grant agreement, or they will be considered void. Work will not begin on a project until a project grant agreement is valid.

OWEB will make Small Grant Project award payments directly to the fiscal agent designated in the Small Grant Project agreement.

(15) Project maintenance and effectiveness monitoring are the responsibility of the landowner. OWEB will not pay for either, and applicants may not use any planned post-project maintenance and effectiveness monitoring as match for the OWEB project grant. However, applicants may budget for plant establishment (i.e., weeding and watering of plants over time to improve chances of successful establishment) in the Small Grant Project application, or they may put the amount estimated for plant establishment toward the required 25 percent match. OWEB will pay for no more than two years of post-project plant establishment, or up to \$500 for two years, which is paid for in the final payment request.

(16) The Small Grant Team will be responsible for providing the Oregon Watershed Enhancement Board and the Soil and Water Conservation Commission with a summary report prior to the end of each OWEB biennium that:

(a) Addresses how the Team's funded projects:

(A) Generally demonstrate clear watershed benefit to aquatic species, wildlife, or watershed health.

(B) Specifically met local priority watershed concerns and Agricultural Water Quality Management Area Plans.

(b) Evaluates the effectiveness of the Team's:

(A) External interactions with landowners, applicants, Grantees, project partners, and OWEB Small Grant Program staff (i.e., the challenges that faced the team with each of these groups and whether the team was successful at resolving them).

(B) Internal interactions with each other (i.e., the challenges that faced the team and whether the team was successful at resolving them).

(c) Attaches the following:

(A) Tracking sheets for recommended and denied applications for the current biennium.

(B) Revised operating procedures, priority watershed concerns, or eligible project types for the coming biennium, if any.

(17) The OWEB Director may authorize an independent performance audit of any Small Grant Team, and if the Director determines the Team is not complying with the rules of the Small Grant Program, may restrict future team funds.

(18) Small Grant Teams will retain unsuccessful and successful applications, as well as meeting records for a period of five years.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-035-0030

Small Grant Program Application

(1) A Small Grant applicant may be any person, tribe, watershed council, soil and water conservation district, not-for-profit institution, school, community college, state institution of higher education, independent not-for-profit institution of higher education, or political subdivision of this state that is not a state agency. A state agency or federal agency may apply for funding under this section only as a co-applicant with one of the other eligible entities.

(2) Small Grant Project applications submitted to the Small Grant Team will include a completed application form provided by OWEB, and will use technical guidance from at least one of the six sources listed below. Small Grant Project applicants will cite in the application the practice code(s), or the page number and paragraph, for the technical guidance source listed. The Small Grant Team will verify the citation. If technical guidance and standards for a project are not available from one of these sources, the project is not eligible for funding under the Small Grant Program.

(a) The Natural Resource Conservation Service (NRCS) Field Office Technical Guide, and local cost share list.

(b) A Guide to Placing Large Wood in Streams (Oregon Department of Fish and Wildlife and Oregon Department of Forestry 1995).

(c) The Oregon Road/Stream Crossing Restoration Guide (Oregon Department of Forestry, Spring 1999).

(d) Forest Practices Technical Note No. 4: Fish Passage Guidelines for New and Replacement Stream Crossing Structures (Oregon Department of Forestry, May 10, 2002).

(e) Forest Practices Technical Note No. 5: Determining the 50-Year Peak Flow and Stream Crossing Structure Size for New and Replacement Crossings Structures (Oregon Department of Forestry, May 10, 2002).

(f) The Nonpoint Source Pollution Control Guidebook for Local Government (Oregon Department of Environmental Quality and Oregon Department of Land Conservation and Development 1994).

ADMINISTRATIVE RULES

(3) Only watershed councils, soil and water conservation districts, tribes, and entities designated as eligible by the Small Grant Team in their operating procedures may serve as fiscal agents for a Small Grant Project.

(4) The application budget is the Small Grant applicant's statement of how OWEB funds will be spent. Should the Small Grant Team be approve the application for funding, the Grantee will only be able to bill OWEB for the line items appearing in the OWEB column in the application budget. Grantees wishing to change either line items or line item amounts must first request permission from OWEB.

(5) The applicant will sign the application. The landowner, if not the applicant, will sign either the application or a cooperative landowner agreement provided by the team. Teams will keep the original cooperative landowner agreement on file, and all signatories, plus OWEB, will be provided copies. Project funds will not be released until OWEB has either the landowner's signature on the application or a signed copy of the cooperative landowner agreement.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-035-0040

Small Grant Program Grants

(1) Prior to the disbursement of any Small Grant Project funds, the Grantee must sign a Small Grant Project agreement containing such terms and conditions as may be deemed necessary by the Director to ensure that the expected benefits of the project are realized, and that applicable legal requirements and any special conditions of the Board with regard to particular grants are met.

(2) Each Small Grant Project awarded will be limited to a maximum of \$10,000 per project, per landowner, per OWEB fiscal year, including technical assistance and fiscal administrative expenses.

(3) Fiscal administrative expenses included in each Small Grant Project may not exceed 10 percent of the OWEB grant amount for direct project costs. However, project grants for a total of \$2,000 or less may include fiscal administrative expenses up to \$200, not to exceed the total amount awarded.

(4) Travel expenses directly related to project implementation are eligible for funding under the Small Grant Program, subject to OWEB review and approval. Travel expenses will be reimbursed only in accordance with rates approved by the Department of Administrative Services and which are in effect at the time the expense was incurred. The Grantee must identify the reason or purpose for all travel expense reimbursement requests. No mileage reimbursement will be paid for the use of motorcycles or mopeds. The Small Grant Program will not reimburse for meals, lodging, or out-of-state travel.

(5) Equipment purchases directly related to project implementation are eligible for funding under the Small Grant Program, subject to OWEB review and approval. However, OWEB discourages the use of limited Small Grant Project funds on equipment purchases, and instead encourages Teams to work with applicants to obtain equipment through other means, such as borrowing or renting. Following project completion, equipment purchased with OWEB funds will reside with any of the following: watershed council, soil and water conservation district, tribe, local government, or a school district. These entities will make the equipment available to each other at no cost, other than nominal maintenance costs.

(6) Small Grant Project award recipients must provide evidence of at least 25 percent secured match for the Small Grant Project award prior to disbursement of grant funds by including a signature of commitment from the entity(ies) providing match on the OWEB Secured Match Form. Match must be current and specific to the Small Grant Project. The same match may not be used for multi-phased projects, unless it is divided among the phases. Applicants may attach the completed match form to their application or they may submit the form with their first grant award payment request. Disbursement of the final grant award payment requires evidence of actual match contributed, shown on the Actual Match Form. Match may include labor, volunteer time, technical assistance, materials or services provided, donated property, or cash. OWEB funding may not be used as match for a Small Grant Project funded by OWEB.

(7) All Small Grant Projects will be completed within 24 months from the date of team approval of the application. No project completion extensions beyond 24 months will be allowed.

(8) Upon project completion, the Grantee will provide OWEB and the Small Grant Team with a copy of the Project Completion Report and color photographs.

(9) The following standards will be applied to each Small Grant Project payment:

(a) Each Small Grant award will be disbursed in no more than two payments.

(b) The first payment may consist of an advance of up to 60 percent of the Small Grant award upon presentation of a detailed estimate of expenses for a specified time period.

(c) No funds may be released until submission of evidence that all required permits and licenses for the project have been granted.

(d) The second and final payment will not be disbursed until OWEB receives from the Grantee through the designated fiscal agent:

(A) Receipts and invoices for expenditures of previous fund releases, and receipts and invoices supporting the new fund release request;

(B) A spreadsheet, documenting all project expenses;

(C) A completed Actual Match Form, showing all project match, which must total at least 25 percent of the amount actually spent on the Small Grant Project;

(D) A satisfactory Project Completion Report with color photographs of the project site; and

(E) A current Oregon Watershed Restoration Reporting Form, showing among other things, evidence of actual match contributed.

(10) Two years following project completion, the individual designated in the project application will provide OWEB and the local Small Grant Team with a Year-Two Status Report. Applicants may budget for this in the OWEB application, or they may put the amount toward the required 25 percent match funds by choosing not to budget for it in the OWEB application.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-035-0050

Eligible Small Grant Projects

(1) The Small Grant Program will fund only those projects that:

(a) Demonstrate in the Small Grant Project application a clear watershed benefit to aquatic species, wildlife, or watershed health.

(b) Are consistent with the local Small Grant Team's priority watershed concerns, as identified in their program grant agreements with OWEB.

(c) Adhere to OWEB administrative rules, OAR 695-005-0010-695-005-0060 and 695-050-0010-695-050-0050.

(d) Meet the definition of "capital expenditure" under ORS 541.351(4).

(e) Are implemented in a manner consistent with the Oregon Aquatic Habitat Restoration and Enhancement Guide.

(f) Use and clearly identify in the small grant application technical guidance from at least one of the six approved sources in OAR 695-035-0030(2), and cite in the application the practice code(s), or the page number and paragraph, for the technical guidance source listed.

(2) Small Grant Projects to be completed in phases on the same property are eligible for Small Grant Project funding, provided only one phase is submitted for funding consideration per OWEB fiscal year, and provided all phases occur at different locations on the property. In general, OWEB encourages multi-phased project applications to be submitted through the OWEB Regular Grant Program.

(3) Teams must select from the following list when identifying priority watershed concerns for their Small Grant Area:

(a) Instream Process and Function;

(b) Fish Passage;

(c) Urban Impact Reduction;

(d) Riparian Process and Function;

(e) Wetland Process and Function;

(f) Upland Process and Function;

(g) Water Quantity/Irrigation Efficiency;

(h) Road Impact Reduction;

(4) The following project types are eligible for funding. Teams are encouraged to be strategic in identifying eligible project types in an effort to better support salmon recovery objectives and Agricultural Water Quality Management Area Plans. Teams may petition OWEB to allow project types not appearing on the list, as described in OAR 695-035-0020(7)(c).

(a) Instream Process and Function:

(A) Improve Instream Habitat: place large wood, boulders, or salmon carcasses;

(B) Manage Erosion: bioengineer stream banks, slope stream banks, or develop water gaps;

(C) Eradicate Exotic Aquatic Species.

(b) Fish Passage. Remove Irrigation or Push-Up Dams: install alternatives (e.g., infiltration galleries, point-of-diversion transfers) or convert from gravity diversion to pumps.

(c) Urban Impact Reduction:

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(A) Install storm water runoff treatments (e.g., create bioswales, green roofs);

- (B) Create Off-Channel Flood Storage;
- (C) Employ Integrated Pest Management.
- (d) Riparian Process and Function:

(A) Manage Nutrient and Sediment Inputs: fence out livestock, develop off-channel watering (in combination with fencing riparian area), or redirect effluent;

(B) Manage Vegetation: plant or seed native riparian species, propagate native riparian plants, or control weeds in conjunction with a restoration project;

- (C) Employ Integrated Pest Management.
- (e) Wetland Process and Function:

(A) Manage Nutrient and Sediment Inputs: fence out livestock or develop alternative watering sites;

(B) Manage Vegetation: control weeds (in conjunction with a restoration project), or plant native wetland species;

(C) Restore Wetlands: excavate or remove fill, or eliminate drainage structures;

- (D) Employ Integrated Pest Management.
- (f) Upland Process and Function:

(A) Manage Erosion: terrace land, employ laser leveling, create windbreaks, install sediment basins, develop filter strips, manage mud (e.g., gravel high-use areas, develop paddocks), or reduce tillage;

(B) Manage Nutrient and Sediment Inputs: redirect effluent, cover manure storage areas where not required by permit, order, or enforcement action, or develop off-channel watering sites (e.g., develop springs, install water pumps, install wells);

(C) Manage Vegetation: reduce fuel loads (e.g., prescribed burning, non-commercial thinning), control/remove juniper (except late-seral/old growth), plant or seed native upland species (or native beneficial mix), or control weeds (in conjunction with a restoration project);

- (D) Employ Integrated Pest Management.
- (g) Water Quantity/Irrigation Efficiency:

(A) Recharge Groundwater: roof water harvesting;

(B) Implement Irrigation Practices that result in decreased water use and in any of the following: measurable increased instream flow, increased groundwater level, or improved water quality (e.g., pipe existing ditch, install drip or sprinkler systems, install automated soil moisture monitors, or recover or eliminate tail water).

(h) Road Impact Reduction:

(A) Decommission Roads;

(B) Improve Surface Drainage.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-035-0060

Ineligible Small Grant Projects

(1) The Small Grant Program will not fund projects that:

(a) Do not demonstrate a clear watershed benefit to aquatic species, wildlife, or watershed health.

(b) Are inconsistent with the local Small Grant Team's priority watershed concerns, as identified in their program grant agreements with OWEB.

(c) Do not adhere to OWEB administrative rules: OAR 695-005-0010-695-005-0060, 695-035-0010-695-035-0070, and 695-050-0010-695-050-0050.

(d) Do not meet the definition of "capital expenditure" under ORS 541.351(4).

(e) Do not use and clearly identify in the small grant application technical guidance and standards from one of the six approved sources listed in OAR 695-035-0050(1)(e).

(f) Are at the same location as, and are identical to, projects that have already been funded, are currently being funded, or are currently being considered for funding through either the Small Grant Program or the OWEB Regular Grant Program.

(2) The following project types are ineligible for funding through the Small Grant Program:

(a) Project planning and design not done in conjunction with the implementation of funded restoration or enhancement activities.

(b) Routine maintenance.

(c) Fish screens.

(d) Constructed stream bank armoring.

(e) Development of off-channel watering systems not done in conjunction with fencing a riparian area or managing nutrient and sediment inputs in upland areas.

(f) Pond cleaning and pond creation (does not include off-channel watering systems and pump-back systems).

(g) Residential landscaping not done in conjunction with the implementation of funded riparian restoration or enhancement activities.

(h) Weed control not done in conjunction with the implementation of funded restoration or enhancement activities.

(i) Projects required as a condition of a local, state, or federal permit, order, or enforcement action (e.g., mitigation projects, manure storage and management projects that are required by a permit from ODA).

(j) Irrigation practices that do not result in decreased water use and any of the following: measurable increased instream flow, increased groundwater level, or improved water quality.

(k) Irrigation water conservation projects that propose any of the following activities:

(A) Irrigation system maintenance or renovation of existing pipe.

(B) Restoring a system that has deteriorated due to lack of maintenance and/or inadequate design.

(C) Portable pipe (does not include gated pipe) or ditch cleaning.

(D) Electrical costs resulting from conversion to pump from flood irrigation.

(l) Western juniper management that involves the removal of late-seral/old growth juniper.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-035-0070

Periodic Review and Evaluation of the Small Grant Program

Once a biennium, and in consultation with representatives of the Soil and Water Commission, tribes, and Small Grant Teams, OWEB will review annual reports submitted by Small Grant Teams and evaluate the need for program improvements and administrative rule changes.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-050-0010

Purpose

These rules establish policies and procedures for assuring that Board actions that affect land use comply with Statewide Planning Goals and are compatible with acknowledged comprehensive plans. These rules also prescribe measures for providing technical assistance to local governments, participation in periodic review of comprehensive plans, resolution of land use disputes and other aspects of state agency coordination required by OAR chapter 660, Division 30. These rules and coordination rules in OAR chapter 695, constitute the Board's state agency coordination program pursuant to ORS 197.180.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-050-0015

Definitions

(1) "Action" means grant-related activities governed by OAR chapter 695, or the adoption, amendment, or implementation of any future Board rule or program found to affect land use pursuant to OAR 660-030-0005(2).

(2) "Land Use Approval" means a final decision or determination made by a local government that concerns the adoption, amendment, or application of the goals or comprehensive plan provisions or implementing ordinances.

(3) "Planning Director" means the director of county or city planning departments, an appropriate designee, or other local official responsible for carrying out land use planning functions.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-050-0020

Policy

State law establishes a complementary relationship between state and local management of watersheds. The Board is required by statute to fund restoration, maintenance, and enhancement of watersheds to protect the well-being of the state and its citizens. Board programs will, however, be planned and implemented by responsible parties at the local level. Local comprehensive plans must provide inventories of local watersheds as well as measures for protecting and managing those watersheds in order to comply with Statewide Planning Goals. In order to carry this out, local governments are encouraged to use watershed council assessments and action plans where appropriate. The Board recognizes that coordination between

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state, local and federal agencies responsible for land management is essential to meeting policy objectives for watershed enhancement established in ORS 541.350 through 541.401. In carrying out its mandate, the Board will maximize the effectiveness of its watershed enhancement efforts by incorporating and accommodating land use objectives as prescribed in acknowledged comprehensive plans.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-050-0025

Applicability

These rules will apply to Board actions authorized and governed by OAR chapter 695.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-050-0030

Compliance with Statewide Planning Goals

(1) Except as provided in section (2) of this rule, Board actions will comply with the Statewide Planning Goals by ensuring compatibility with acknowledged comprehensive plans as described in these rules and OAR chapter 695.

(2) The Board will adopt findings that its actions comply with the Statewide Planning Goals if:

(a) An acknowledged comprehensive plan does not contain:

(A) Requirements or conditions specifically applicable to a Board action; or

(B) General provisions, purposes, or objectives which would be substantially affected by the action; or

(b) Other conditions outlined in OAR 660-030-0065 exist.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-050-0035

Compatibility with Acknowledged Comprehensive Plans

(1) The Board will assure that its actions are compatible with acknowledged comprehensive plans by following provisions established in OAR chapter 695. These provisions will:

(a) Require grant applicants to obtain and submit land use information with the application package; and

(b) Preclude the distribution of grant awards until the planning directors of affected counties or cities verify that: the project is allowed by and compatible with comprehensive plans; and, all local land use approvals have been issued.

(2) The Board will avoid land use disputes with local government agencies following procedures prescribed in section (1) of this rule. However, the Board will provide for appropriate resolution measures as required by OAR 660-030-0070(4) and (7) through (12) if warranted.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-050-0040

Compliance of New or Amended Rules and Programs and their Compatibility with Acknowledged Comprehensive Plans

(1) The Board will examine proposals to amend or add to its rules and programs to determine if they affect any use as prescribed in OAR 660-030-0005(2). The Board may approve supplementary criteria for use in making its determination.

(2) The Board will notify the Department of Land Conservation and Development and any local governments relying on the Board for goal compliance as provided in OAR 660-030-0085 of all pending rule or program changes which are found to affect land use as described in section (1) of this rule. The notice will describe:

(a) The proposal;

(b) How the proposal affects land use;

(c) How the proposal provides for compliance with the Goals and compatibility with comprehensive plans; and

(d) A date until which the Board will accept written and oral comment on the proposal.

(3) The Board will not approve any rule or program changes, which have been identified in responses to the notice provided pursuant to section (2) of this rule, as out of compliance with the Goals or incompatible with acknowledged comprehensive plans.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-050-0045

Coordination with State and Federal Agencies and Special Districts

The Board will coordinate its actions with state and federal agencies and special districts as required in OAR 660-030-0060(c) by complying with the interagency coordination provisions in ORS 541.350 through 541.420. These provisions include:

(1) Encouraging individuals, organizations and agencies to work jointly on watershed enhancement programs.

(2) Coordinating the development of local watershed enhancement programs and projects.

(3) Coordinating the implementation of enhancement projects with the activities of the Natural Resources Division of the Oregon Department of Agriculture, and other affected local, state and federal agencies.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

695-050-0050

Cooperation with, and Technical Assistance to, Local Governments

(1) The Board will place a high priority on cooperating with and providing technical assistance to participating agencies as prescribed in ORS 541.350 through 541.420.

(2) The Board will maintain information relating to watershed management and enhancement.

(3) The Board will coordinate its participation in periodic review of comprehensive plans with the Water Resources Department pursuant to provisions in the Department's certified state agency coordination program.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05

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Oregon Youth Authority
Chapter 416

Adm. Order No.: OYA 13-2004

Filed with Sec. of State: 11-12-2004

Certified to be Effective: 11-12-04

Notice Publication Date: 10-1-04

Rules Repealed: 416-520-0000, 416-520-0010, 416-520-0020, 416-520-0030, 416-520-0040, 416-520-0050, 416-520-0060, 416-520-0070, 416-520-0080, 416-520-0090, 416-520-0100, 416-520-0110, 416-520-0120

Subject: These rules will be repealed in their entirety. Relevant rule language has been moved to OAR Chapter 416, Division 530.

Rules Coordinator: Kimberly Walker—(503) 378-3864

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Adm. Order No.: OYA 14-2004

Filed with Sec. of State: 11-12-2004

Certified to be Effective: 11-12-04

Notice Publication Date: 10-1-04

Rules Repealed: 416-510-0000, 416-510-0010, 416-510-0020, 416-510-0030, 416-510-0040, 416-510-0050, 416-510-0060, 416-510-0070, 416-510-0080, 416-510-0090

Subject: These rules are repealed in their entirety. Relevant rule language has been moved to OAR Chapter 416, Division 530.

Rules Coordinator: Kimberly Walker—(503) 378-3864

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Adm. Order No.: OYA 15-2004

Filed with Sec. of State: 11-12-2004

Certified to be Effective: 11-12-04

Notice Publication Date: 10-1-04

Rules Adopted: 416-530-0125, 416-530-0130, 416-530-0140, 416-530-0150, 416-530-0160, 416-530-0170

Rules Amended: 416-530-0000, 416-530-0010, 416-530-0020, 416-530-0030, 416-530-0040, 416-530-0050, 416-530-0060, 416-530-0070, 416-530-0080, 416-530-0090, 416-530-0100, 416-530-0110

Subject: Division 530 has been extensively revised as part of our administrative review process. OARs 416-530-0000 through 416-530-0120 have been amended and reordered to better define the foster home certification process. References to group homes, the Indian Child Welfare Act, and residential treatment programs have all been deleted. OAR 416-530-0130 through 416-530-0170 have been

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added to include language concerning certification standards for private youth care agencies' proctor homes.

Rules Coordinator: Kimberly Walker—(503) 378-3864

416-530-0000

Purpose

(1) The OYA seeks to ensure that the safety and best interests of offenders placed in OYA offender foster homes are served. These rules establish OYA standards for the certification process, the standards that foster parents must meet while operating a foster home, and the process by which a certificate to operate a foster home may be placed on inactive referral status, terminated, suspended, or revoked.

(2) These rules apply to any foster home where offenders in OYA custody are placed.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.810 - 420.840, 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 15-2004, f. & cert. ef. 11-12-04

416-530-0010

Definitions

(1) Applicant: A person who applies for a certificate of approval to operate and maintain a foster home, including persons who seek initial certification or re-certification.

(2) Case Plan: A formal plan with prescribed interventions and documentation requirements and a tool to assist staff in managing cases, setting goals and reviewing youths' interventions and progress. A Case Plan constitutes and fulfills the requirements of the Reformation Plan as defined in ORS 420A.005, 420A.125 and 420A.010 and is created and maintained in the statewide Juvenile Justice Information System (JJIS).

(3) Certificate: A certificate of approval, issued by the OYA, to operate a foster home where offenders in OYA custody are placed.

(4) Certification process: The process of initial or renewal application for certification to operate a foster home.

(5) Criminal history check: The process used by the OYA to conduct criminal records background checks on persons pursuant to these rules and OAR chapter 416, division 800, including computerized and fingerprint-based processes.

(6) Denial: The refusal of the OYA to issue a certificate of approval (including re-certification) to operate a foster home.

(7) Discipline: A process by which foster parents and OYA assist offenders to develop the self-control and self-direction necessary to assume responsibilities, make daily living decisions, and learn to live in conformity with accepted levels of social behavior.

(8) Domestic animals: Any of various animals domesticated so as to live and breed in a tame condition as household pets. Examples of domestic animals include but are not limited to dogs, cats, and horses.

(9) Foster parent employee: Any person receiving compensation from foster parents for assistance in the care and supervision of offenders placed in the foster home.

(10) Foster care maintenance payment: The OYA's monthly payment to the foster parent to cover expenses such as the offender's room, board, clothing, allowance, personal incidentals, transportation, respite provider, educational supplies, or other costs approved by the OYA.

(11) Foster home: A home in the community which is certified by the OYA and maintained and lived in by a foster parent who provides supervision, food, and lodging for offenders in OYA custody.

(12) Foster parent: A person certified by the OYA who demonstrates special competence to supervise offenders with serious social and/or behavioral maladaptive characteristics in a foster home setting. A foster parent must be unrelated to an offender by blood or marriage. Foster parents provide supervision, food, and lodging to offenders as the offenders progress through their case plan.

(13) Family foster home agreement: A written agreement between the OYA and the foster parent stating mutual expectations of the parties.

(14) Home study: The assessment process, conducted prior to issuance of a certificate, to determine an applicant's ability to provide foster care services to offenders.

(15) Information required: All information requested by the OYA, including information used to process criminal history checks.

(16) Multidisciplinary Team (MDT): A group of persons responsible for developing comprehensive case plans for offenders. The process is a collaborative effort between OYA staff, the offender's biological and foster families and service providers. The MDT is responsible for ensuring that case plans are developed, reviewed and revised.

(17) Mechanical restraint: Any apparatus, device, or contraption applied or affixed to the offender to limit movement.

(18) Members of household: Any person who lives in the foster home or who assists in the care provided to offenders including but not limited to the provision of tutoring, recreation, relief care, household chores, or other services, whether paid or unpaid.

(19) Offender: A person who has been found to be within the jurisdiction of the juvenile court under ORS 415C.005 for an act committed when the person was under 18 years of age.

(20) Physical force: To physically force or constrain the movement of a person in order to prevent self-harm, harm to others, damage to property, or to remove a person from a scene of danger.

(21) Psychotropic medications: Medication prescribed with the intent to affect or alter thought processes, mood, or behavior, including but not limited to, anti-psychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(22) Punishment: The intentional infliction of physical or emotional pain. Punishment includes, but is not limited to: Physical force or threat of physical force inflicted in any manner upon an offender; verbal abuse, including derogatory remarks about the offender or his/her family; denial of food, clothing, or shelter; assignment of unreasonably strenuous exercise or work; punishment for bed-wetting; delegating or permitting punishment of an offender by another offender; and use of cold shower as punishment.

(23) Regular certificate: A certificate of approval issued by the OYA, for a period of one year, when all foster care standards have been met.

(24) Respite care: A temporary arrangement between the foster parent and the respite provider to allow the foster parent(s) time away of 12 hours or more from the offender.

(25) Respite provider: An individual approved by the OYA who is at least 21 years of age and not a member of the household who temporarily assists with supervision of offenders when the foster parent is not available.

(26) Revocation: The action taken to rescind a foster home certificate of approval after the OYA determines that the foster parent or the foster home is in non-compliance with statute, administrative rule(s) or the foster parent agreement with OYA.

(27) Special certificate: A conditional certificate of approval that limits the foster home to care and supervision of a specific offender, or other specified offenders, under specific conditions.

(28) Suspension: A temporary withdrawal of the foster home certificate after the OYA determines that the foster home is in non-compliance with statute, administrative rule(s) or the foster parent agreement with the OYA.

(29) Volunteer: Any person who is not a member of the household and who assists, for no compensation, with the supervision of offenders and with other activities, including but not limited to, food preparation, household chores, recreation, tutoring, mentoring, or respite care.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 15-2002, f. & cert. ef. 1-18-02; OYA 15-2004, f. & cert. ef. 11-12-04

416-530-0020

Certification Process

(1) The privilege of certification is granted based upon the qualifications of the applicants. Applicants may meet certification requirements, but it is the OYA's responsibility to exercise discretion and judgment in the selection of homes for offenders.

(2) The certification process is aimed at building a partnership between the applicant and the OYA.

(a) The certification process allows the applicant to ask questions, learn about OYA requirements for certification, and become better prepared to supervise offenders.

(b) The certification process allows the OYA to assess the willingness and ability of the applicant to work effectively in partnership with the OYA to meet the specific needs of offenders.

(3) The OYA has a responsibility to Oregonians to manage its resources within available funds. When the OYA Director or designee determines that funding for these resources is jeopardized or otherwise not available, the OYA Director may suspend recruitment of new foster home resources in areas where the availability of foster homes exceeds the need for placements.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04

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416-530-0030

Application Process

Applicants for certification must:

- (1) Complete all forms required by the OYA.
- (2) Participate in home studies as required by the OYA.
- (3) Give all information required by the OYA to verify compliance with these rules, including:

(a) Name(s), gender, address, birth date, social security number, and driver's license number of all applicants and members of the household.

(b) Names and addresses of at least four persons, three of whom are unrelated to the applicant, who have known the applicant for two years or more and who can attest to the applicant's ability to provide care and supervision to offenders. If the applicants are applying for joint certification, each person will provide at least two different references who are unrelated to the applicant, who have known the applicant for two or more years, and who can attest to the applicant's ability to provide care and supervision to offenders.

(c) A statement as to whether the applicant(s) has ever operated or currently is operating a licensed/certified care facility or foster home and reasons for the termination or closure of that license or certification.

(d) Documentation from all members of the household regarding all criminal arrests and/or charges including juvenile delinquency arrests and/or charges, the dates of offenses, and the resolution of those arrests.

(e) Documentation from all members of the household regarding all allegations and/or charges of abuse and/or neglect, with dates, locations, and resolutions of those allegations.

(f) Proof of sufficient income to meet the needs and ensure the stability and financial security of the members of the household, independent of the foster care maintenance payment.

(4) Participate in a criminal history check process, as defined by these rules and chapter 416, division 800.

(a) The OYA will require a criminal history check, including fingerprints, for applicants, but may require criminal history checks of other members of the household.

(b) The OYA will conduct criminal history checks at the time of certification and re-certification; at the time a foster home certified by another agency wishes to serve OYA offenders; and when the OYA deems it necessary for the safety of offenders in the home.

(c) The OYA may require that the applicant(s) or member(s) of the household provide processing fees for the above purposes.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04

416-530-0040

Foster Parent Qualifications

Applicants must:

(1) Be at least 21 years of age.

(2) Meet the qualifications and standards described in these rules and chapter 416, division 800.

(3) Demonstrate the following personal qualifications.

(a) Responsible, stable, emotionally mature adults who exercise sound judgment and display the capacity to meet the mental, physical and emotional needs of offenders placed in foster care.

(b) Understand the behaviors of offenders, as well as ensure the safety of the community.

(c) Have knowledge and understanding of non-punitive discipline and ways of helping an offender build positive personal relationships, self-control, and self-esteem.

(d) Have respect for persons with differing values, lifestyles, philosophies, and cultural identity and heritage.

(e) Be able to realistically evaluate which offenders they can accept, work with, and integrate into their family.

(f) Have supportive ties with family, friends, the neighborhood, and the community.

(4) Be physically and mentally able to perform the duties of foster care.

(a) The OYA may require a medical statement from a physician verifying that neither the applicant nor any member of the household suffers from a communicable disease, specific illness, or disability which would interfere with the ability to care for and supervise offenders.

(b) The OYA may ask the applicant to consent to the release of psychological, medical or physical, sex-offender, drug and alcohol, or other reports and evaluations.

(c) In the case of alcoholism or substance abuse, the applicant must be able to demonstrate he/she has been substance-free and sober for at least two years prior to making application for certification.

(5) Be free from a professional or personal conflict of interest. If the applicant is an OYA employee or works in a professional capacity which may contribute to a conflict of interest, the application and supporting study must be reviewed by the Assistant Director, Field Operations, or designee, who will decide whether a certificate should be issued.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef. 11-12-04

416-530-0050

Selection

(1) The OYA will determine which applicants undergo a complete certification study, which applicants are certified, and which homes qualify to best meet the needs of a particular offender.

(2) The OYA will review the application and supporting documentation to determine compliance with these rules before making a decision to grant or deny an application for certification.

(3) A finding of suitability based on the results of the criminal history check is only one factor OYA will use to determine whether or not to approve an application.

(4) In addition to the application information, the OYA may contact other relevant sources, including but not limited to: schools, employers, and other persons, including the applicant's adult children.

(5) The OYA may deny an application if:

(a) Applicants falsify (including by act of omission) information. If falsification is discovered after certification, or if the foster parent fails to inform the OYA of any disqualifying condition that arises after certification, the certificate may be revoked.

(b) If the standards of these rules and chapter 416, division 800 are not met.

(6) The OYA will make its decision, regarding certification, within 90 days of the receipt of the application and all supporting documentation. **The OYA will not review the application for certification unless all materials have been submitted.**

(7) After successful completion of the application process, a certificate will be issued. Persons wishing to operate a foster home under a licensed Private Youth Care Agency, as described in these rules, will be issued a special certificate. This certificate may identify any limits on population served.

(8) Certificates must state:

(a) The period of time for which it is issued;

(b) The name of the foster parents;

(c) The address of the residence;

(d) Type of certificate; and

(e) The number of offenders the home is certified to serve.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef. 11-12-04

416-530-0060

Foster Parent Duties and Responsibilities

(1) Governance:

(a) Foster parents must comply with the standards of these rules and OYA policies and procedures.

(b) Foster parents must abide by the responsibilities described in the OYA Foster Home Agreement. This agreement will be signed at the time of initial certification and annually, thereafter.

(c) Foster parents must provide care and supervision in accordance with the offender's individual case plan.

(d) Foster parents must allow OYA staff to have access to the home and foster care records, for the purpose of on-going compliance monitoring.

(2) Training:

(a) Applicants are required to complete an agency approved pre-service training before they are eligible for initial certification.

(b) On an annual basis, thereafter, foster parents must complete a minimum of 10 hours of training. If the home is a two-parent foster home, each parent must complete a minimum of 10 hours of training.

(c) All training must be provided or approved by the OYA and must include educational opportunities designed to enhance the applicant's/foster parent's knowledge, skills, and abilities to meet the special needs of offenders.

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(A) The OYA may suspend a certificate if no offenders are currently in placement and the training requirements have not been met.

(B) If offenders are in the home and the annual training hours have not been completed, the certificate will be converted to a special certificate to serve the offenders currently in the foster home. No additional offenders may be placed in the home until the training hours are completed.

(3) Treatment team Foster parents will work with OYA staff, by:

(a) Participating in Multidisciplinary Team (MDT) reviews.

(b) Implementing changes in care and supervision only as guided by the supervising Parole/Probation Officer (PPO) and the offender's case plan.

(c) Notifying the OYA of changes likely to affect the life and circumstances of the foster family, including but not limited to the following situations.

(A) Notification to the OYA, immediately or within 24 hours, of an injury, illness, accident, or any circumstance which may have a serious affect on the health, safety, physical or emotional well being of an offender.

(B) Notification when a change in address is anticipated. If circumstances are not conducive to advance notice, foster parents must provide this information as soon as possible after the change of address occurs.

(C) Changes in the composition of the members of the household. If circumstances are not conducive to advance notice, foster parents must provide this information as soon as possible after the change occurs.

(D) Notifying the OYA immediately of any emergency involving an offender, such as an unauthorized absence, law violation, accident, or serious illness.

(d) Allowing the OYA access to the foster home and to offenders placed there.

(e) Obtaining approval from the OYA prior to taking an offender out of state.

(4) Offender families Foster parents must respect and support the offender's relationship with his/her family by:

(a) Assisting OYA staff in planning visits with the offender and his/her family.

(b) Allowing offenders reasonable opportunities to communicate with family.

(c) Providing opportunity for regular contacts and private visits or phone calls with the Parole/Probation Officer (PPO).

(5) Confidentiality Offender information and records are confidential. Foster parents must maintain all information relating to offenders in a manner that ensures its protection.

(a) Foster parents must not share confidential information about a case, or the persons involved in that case, without authorization from the OYA.

(b) Confidential information may be disclosed only when necessary to provide for the safety and well-being of offenders.

(6) Records:

(a) Foster parents must, for the duration of the offender's placement in the foster home, maintain records, including, but not limited to, information relating to the offender's health (including immunizations), education, and placement progress.

(b) All records belong to the OYA and the offender. The foster parent must immediately transfer all records to the next care placement when the offender leaves the foster home.

(7) Offender reformation/supervision Foster parents must provide structure, accountability, and supervision designed to promote the physical, social, intellectual, spiritual, and emotional development of the offenders, while providing for community protection. In accordance with the case plan, foster parents must:

(a) Treat each offender with respect and dignity.

(b) Help the offender develop skills and perform tasks that promote independence and self-sufficiency.

(c) Ask offenders to assume work responsibilities appropriate to the offender's age and ability, and commensurate with those expected of the foster parent's own children.

(8) Household composition

(a) No more than three OYA offenders may reside in any given foster home at one time. In addition, no more than five total children (including the foster parent's own children) may reside in one foster home.

(b) Foster parents must not: care for unrelated adults on a commercial basis, accept children for day care, or accept any person for placement from any source other than the OYA without the OYA's prior written approval.

(9) Respite care:

(a) When the foster parents are absent 12 hours or more, an approved respite provider of at least 21 years of age, capable of assuming foster care responsibilities, will be present.

(b) When foster parents are absent for overnight or longer, the OYA must be given advance notice, including the dates of absence; telephone number where the foster parents can be reached; and the name, telephone number, home address and qualifications of the respite provider.

(c) Respite providers must be approved by the OYA as having met the standards of these rules.

(10) Food and nutrition:

(a) On a daily basis, foster parents must provide three well-balanced meals and appropriate snacks.

(b) Meals may reflect any special and/or cultural dietary needs of the offenders, including those ordered by a physician.

(11) Clothing and personal belongings:

(a) Foster parents must provide each offender with clean clothing that is appropriate to the offender's age, gender, and individual needs.

(b) Offenders must be allowed to participate in choosing their own clothing.

(c) Offenders may bring and acquire appropriate personal belongings.

(12) Discipline and guidance:

(a) Foster parents must work with the PPO to develop a behavior management plan that sets clear expectations, limits, and consequences of behavior through use of adequate and appropriate structure and supervision.

(A) Foster parents must provide positive discipline, supervision, and guidance.

(B) Discipline must be designed to guide offenders with kindness and understanding, while holding the offender accountable for personal behaviors.

(b) No offender or other person(s) in a foster home will be subjected to physical abuse, sexual abuse, sexual exploitation, neglect, emotional abuse, mental injury or threats of harm.

(13) Health care:

(a) The offender has a right to confidentiality with regard to his/her medical care, mental health, or dental care.

(b) Foster parents must work with the OYA to ensure that the offender's physical and mental health care needs are met, including but not limited to:

(A) Scheduling appointments and arranging transportation to medical, dental, or counseling appointments.

(B) Ensuring that immunizations are current.

(C) Reporting to the OYA when corrective or follow-up medical, mental health or dental care is needed, and arranging necessary care.

(D) Obtaining prior consent from the OYA for medical treatment that is not routine, including surgery.

(E) Obtaining emergency medical care, when necessary.

(b) Medication management:

(A) The provisions of OAR chapter 416, division 340 apply.

(B) Offenders have a right to refuse their medications. When this occurs, the foster parent must document the refusal and immediately notify the PPO.

(C) Prescription medications must be administered only when ordered by a physician.

(D) All medications must be stored in a manner that prevents unauthorized access.

(E) Foster parents must inform the OYA within one working day if any psychotropic medications are prescribed.

(c) Medical records:

(A) Offender medical information must be kept confidential and in a secure location.

(B) Medical information may be shared only in compliance with Oregon Revised Statutes, and OYA rules and policy.

(C) Copies of medical information must be provided to the OYA.

(d) The foster parents must provide each offender individual items necessary for personal hygiene and grooming.

(14) Religious, cultural, ethnic heritage Foster parents must respect the ethnic heritage, cultural identity, and language of the offender and the offender's family by:

(a) Providing reasonable and meaningful opportunities for the offender to develop relationships with others of similar cultural and ethnic background.

(b) Not requiring an offender to participate in religious activities or events contrary to the offender's beliefs.

(15) Education:

ADMINISTRATIVE RULES

(a) Within five days of placement in the foster home, the foster parent must enroll the offender in an appropriate educational or vocational program, as outlined in the case plan.

(b) Foster parents must be actively involved in educational programs appropriate for the offender's age and abilities.

(c) Foster parents must work with school personnel when issues arise at school, and report to the OYA any situation that may require OYA involvement.

(16) Recreation:

(a) Recreational activities appropriate to the age and abilities of the offender must be provided, as described in OAR chapter 416, division 500, and OYA policy.

(b) Offenders must be encouraged to participate in community activities both with the foster family and on their own, in accordance with the case plan.

(17) Restrictions:

(a) No mechanical restraints, other than car seat belts, may be used on OYA offenders.

(b) Foster parents must not provide tobacco products in any form to offenders.

(c) Swimming pools and hot tubs must be made inaccessible to offenders unless supervised adult supervision is provided.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef 11-12-04

416-530-0070

Standards for the Foster Home

(1) General:

(a) Schools, recreation, churches, medical care, and community facilities must be accessible from the foster home. The foster home and its premises must be comparable in appearance to other homes in the community in which it is located.

(b) If care is provided to one or more developmentally disabled or physically impaired offenders, the OYA must consult with the relevant professionals to identify necessary accommodations to the foster home and ask the foster parent to implement the necessary changes.

(c) Foster homes must have a working telephone with service.

(2) Kitchen:

(a) Foster parents must make available the equipment necessary for the safe preparation, storage, serving and cleanup of meals.

(b) Foster parents must ensure that all cooking and refrigeration equipment is kept in working and sanitary conditions.

(c) Foster parents must ensure that meals are prepared and served in a safe and sanitary manner minimizing the possibility of food poisoning or food infection.

(3) Living areas:

(a) The foster home must have sufficient living or family room space that is comfortably furnished and accessible to all members of the household, including offenders.

(b) Foster homes must be well-heated and well-ventilated.

(4) Bedrooms:

(a) Bedrooms occupied by offenders must:

(A) Be safe and have adequate living space for each offender.

(B) Have windows that open and provide sufficient natural light and ventilation.

(C) Have a bed for each offender and clean bed linens, blankets (as appropriate to the season) and pillows.

(D) Have a functioning smoke alarm.

(b) If an 18-year-old or older offender is to share a bedroom with a younger offender, approval must be obtained from the Parole/Probation Supervisor and the Assistant Director, Field Operations.

(c) Offenders of opposite gender may not occupy the same bedroom.

(d) In no event may more than three offenders sleep in one bedroom.

(e) Each offender must be provided with adequate storage space in or near the bedroom he or she occupies for personal belongings and a designated space for hanging clothes.

(f) Flexibility in the decoration of sleeping areas must be allowed to accommodate the personal tastes and expressions of the offenders in care.

(g) Bedroom doors must not have locks.

(h) Sex offenders must not share a bedroom with non-sex offenders or members of the household. Sex offenders must occupy a bedroom either individually, or in a group of three sex offenders. Two sex offenders must not occupy a single bedroom.

(5) Domestic animals:

(a) Foster parents must restrict access to potentially dangerous animals.

(b) Only domestic animals may be kept as pets.

(c) Domestic animals will be properly cared for, supervised, and otherwise maintained in compliance with local ordinances.

(d) Rabies vaccination for pets must be kept current as required by law. Proof of rabies vaccination must be available to the OYA upon request.

(6) Firearms

(a) Foster parents must, within one working day, notify the OYA any time a firearm is brought to the foster home for storage.

(b) Members of the household who possess a concealed weapon permit must:

(A) Give the OYA a copy of the permit;

(B) Give the OYA a written plan regarding how the member of the household will keep concealed weapons secure from offenders when in the home or in vehicles when transporting an offender.

(c) Firearms must remain unloaded and stored in a locked compartment. Ammunition must be stored in a separate locked compartment. Trigger locks alone are not considered adequate.

(d) With the exception of law enforcement personnel, no person in any vehicle transporting an offender may carry a loaded firearm.

(7) Safety:

(a) Swimming pools and hot tubs must be maintained in a safe and clean condition, and must comply with local safety regulations and ordinances.

(b) Any safety hazard identified by anyone must immediately be remedied by the foster parent.

(c) An emergency access must be available to any room that has a lock.

(d) Stairways must be equipped with handrails.

(e) All medications, poisonous chemicals, and toxic cleaning materials must be stored in a way that prevents access by offenders.

(f) At least one working smoke alarm must be placed on each floor of the foster home. In addition, there must be a working smoke alarm in each bedroom in which an offender sleeps.

(g) At least one unexpired and operable class 2-A-10BC or higher rated fire extinguisher must be available and maintained in each foster home.

(h) Outdoor tools and equipment, machinery, chemicals, flammable or combustibles must be stored in a safe manner.

(i) A written home evacuation plan must be available to all offenders.

(A) The evacuation plan must be practiced with each offender at the time of placement and at least once a year to ensure all offenders understand the procedures.

(B) The evacuation plan, including evacuation diagram, must be posted in a clearly visible and conspicuous location.

(j) The use of space heaters is limited to electric space heaters equipped with tip-over protection. No extension cords may be used with such heaters or in place of permanent wiring. No propane space heaters without approved venting are to be used in the foster home. Kerosene space heaters are not allowed.

(k) Foster homes must have two unrestricted emergency exits in case of fire.

(A) A sliding door or window that can be used to evacuate offenders may be considered a usable emergency exit.

(B) Barred windows used as possible emergency exit in case of fire must be fitted with operable quick release mechanisms.

(C) Bedrooms used by offenders that are located in basements or above the ground floor must have safe and direct emergency exit to the ground.

(8) Sanitation and health:

(a) The foster home must be kept clean and free of hazards to the health and physical well being of the family.

(b) Measures must be taken to keep the house and premises free of vermin.

(c) First aid supplies must be stored in an easily accessible place.

(d) A continuous supply of safe, clean drinking water must be available.

(A) Private water sources and septic tank systems must be kept safe and functioning properly.

(B) Private water sources must be tested and approved by an appropriate official upon OYA request.

(e) Only pasteurized or powdered milk must be used for family consumption.

ADMINISTRATIVE RULES

(f) All plumbing must be kept in working order, and an adequate supply of hot water for bathing and dish washing must be available.

(g) Hot water heaters must be equipped with a safety release valve and an overflow pipe that directs water to the floor or to another approved location.

(h) The foster home must have a minimum of one flush toilet, one washbasin with running water, and one bath or shower with hot and cold water.

(i) Pending weekly removal, garbage/refuse must be stored appropriately, with no accumulation of garbage, debris, or rubbish that emits offensive odors.

(9) Transportation safety:

(a) All vehicles used to transport offenders must have, at a minimum, liability insurance coverage.

(b) Only licensed and insured drivers possessing a current and valid driver's license may transport offenders.

(c) The driver must ensure that all passengers use seat belts during the transport.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef 11-12-04

416-530-0080

Exceptions

(1) The OYA may allow exceptions to these rules, unless a rule specifies that no exception is possible.

(a) Exceptions must be approved by the local Parole/Probation Supervisor and the Assistant Director, Field Operations, or designee.

(b) Exception requests must be made in writing, state the need for the exception, signed by the required decision-maker, and filed in the certification file. An exception is not effective until granted in writing.

(c) Exceptions must be accompanied by a written plan showing how the safety of the offenders in placement will be ensured while the exception is in effect.

(d) Each request for an exception must be evaluated on its own merits. Granting an exception does not set a precedent that must be followed by the OYA when evaluating subsequent requests for exceptions.

(2) No exceptions will be made for rules relating to fire safety.

(3) Any exceptions to household composition must take into consideration the ratio of adults to offenders, the level of supervision available, the skill level of the foster parents, and the needs of the other children in the home.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef 11-12-04

416-530-0090

Inactive Referral Status; Suspension; Revocation of Certificate

(1) Inactive referral status, provider initiated:

(a) Foster parents may request up to 12 months of inactive referral status.

(A) In order for inactive referral status to be granted, there can be no unresolved matters relating to non-compliance with certification rules.

(B) Offenders will not be placed in the foster home during inactive referral status.

(C) Prior to a return to active status, foster parents must be in compliance with all certification rules, including training requirements.

(2) Inactive referral status, OYA initiated:

(a) The OYA may require that a foster parent be placed on inactive referral status due to changes in the family such as death, divorce, relatives moving in with the family, or other circumstances that the OYA determines will put additional stress or pressure on the family. Prior to making a determination that a foster parent will be placed on inactive status, the OYA will discuss the status change with the foster parent. Once the OYA determines that a foster parent will be placed on inactive referral status, the OYA will notify the foster parent in writing of the change in status and the duration of that change.

(b) The OYA initiated inactive status may last for up to 180 days, during which time no additional offenders will be placed in the home. The OYA may continue the inactive status for more than 180 days if, prior to a return to active status, the following conditions are not met:

(A) A mutually agreed upon plan must be developed by the OYA and the foster parent to address the issues that led to the change to inactive status.

(B) No conditions may exist that compromise the safety of offenders placed in the home.

(C) Foster parents must be in compliance with all certification rules, including training requirements.

(3) Suspension:

(a) The OYA may suspend a foster home certificate for up to 180 days as a result of violations of these rules or because conditions in the home render it non-certifiable.

(b) A notice of suspension must be in writing and must list the violations, the actions necessary to reach compliance, and the OYA services available to assist the foster parent(s) with compliance.

(c) Offenders will be removed from foster homes with suspended certifications. No additional placements will be made during the period of suspension.

(d) Within 30 days of the suspension, the foster parent(s) must respond and agree to a written corrective action plan listing the steps the foster parent(s) will take and the services and agencies the foster parent will use to reach compliance.

(A) The corrective action plan must be signed and approved by the foster parent(s) and the OYA.

(B) Failure to timely submit a corrective action plan may result in revocation.

(e) At the end of the suspension period or when the foster parent complies with the corrective action plan to remedy the conditions that led to the suspension, the OYA may:

(A) Reinstate the certification for the term of the original certification;

(B) Approve an application for re-certification;

(C) Deny an application for re-certification; or

(D) Revoke the certification.

(4) Denial and Revocation

(a) The OYA may deny an application for a foster home certificate if an applicant fails to meet any of the criteria set forth in these rules, or does any of the following:

(A) Falsifies an application, either knowingly or inadvertently, by providing inaccurate information or by omitting information;

(B) Fails to provide information requested by the OYA within the time frame set by the OYA; or

(C) Fails to inform the OYA of conditions that could disqualify the foster parent(s) from eligibility.

(b) If the OYA denies an application for a foster home certificate, the OYA will provide the applicant with a written notice of denial stating the reason(s) for the denial.

(c) The OYA may immediately revoke a foster home certification any time it determines that offender or public safety concerns warrant an immediate revocation.

(d) The OYA may revoke a foster home certification after considering any of the following:

(A) The severity of the violation;

(B) The number of similar or related violations;

(C) Whether the violations were willful or intentional;

(D) The prior history of violations;

(E) Other circumstance determined by the OYA to be applicable to the particular violation.

(e) The OYA may also revoke a foster home certification if any of the following occur:

(A) The OYA discovers after it issues a foster home certificate that the foster parent(s) falsified an application, either knowingly or inadvertently, by providing inaccurate information or by omitting information;

(B) After certification, the foster parent(s) fail to provide information requested by the OYA in the time frame set by the OYA; or

(C) The foster parent(s) fail to inform the OYA of conditions that could disqualify the foster parent(s) from eligibility.

(f) The OYA may also revoke a foster home certification any time it determines that violations occur.

(g) If the OYA revokes a foster home certification, the OYA will provide a written notice of revocation stating the reason(s) for revocation.

(h) Applicants whose applications have been denied and foster parents whose certificates have been revoked may not reapply for certification for five years from the date of revocation or denial, unless a lesser time or specific condition is stated in the denial or revocation notice.

(5) Appeal:

(a) The person aggrieved may appeal the denial, suspension or revocation of a certificate by making a written request for a hearing on the matter to the office that issued the notice of denial, suspension or revocation.

ADMINISTRATIVE RULES

(b) The request for hearing must be received by the OYA office within 10 calendar days from the date the notice of denial, suspension, or revocation was mailed.

(c) If a request for hearing is not received within 10 days, the right to a hearing is considered waived and the notice of denial, suspension, or revocation will immediately become a final order by default.

(d) If a hearing is requested timely, the OYA will provide notice of the time and place of the hearing, and provide information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing.

(6) Model Rules of Procedure:

(a) Pursuant to the provisions of ORS 183.341, the OYA adopts the Attorney General's Model Rules of Procedure OAR 137-003-0000 to 137-003-0091 as procedural rules for contested case hearings.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef. 11-12-04

416-530-0100

Purpose

(1) These rules set forth standards specific to the OYA's relationship with Private Youth Care Agencies offering residential care programs in a foster home model, hereafter called proctor homes.

(2) OYA may obtain and consider criminal information on certain employees and volunteers of Private Youth Care Agencies in order to protect the best interest of offenders.

(3) Unless otherwise specified, the provisions of OAR 416-530-0000 to 416-530-0090 and OAR chapter 416, division 800, apply.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04

416-530-0110

Definitions

(1) Private Youth Care Agency employee: An individual applying for a salaried position with a Private Youth Care Agency or having a salaried position and being considered for an assignment within a Private Youth Care Agency.

(2) Proctor home: A home in the community that is certified by the OYA and supervised by a Private Youth Care Agency.

(3) Proctor parent: A person certified by the OYA in accordance with the provisions of these rules and employed by a Private Youth Care Agency.

(4) Proctor parent agreement: A written agreement between the Private Youth Care Agency and the proctor parent stating mutual expectations of the parties.

(5) Special certificate: A conditional certificate of approval that limits the offender proctor care home to care and supervision for a specific offender, or care for other offenders under specific conditions.

(6) Private Youth Care Agency Volunteer: An individual applying for or requesting to work on assignments for a Private Youth Care Agency on an unsalaried basis.

(7) Private Youth Care Agency: Any agency, society, institution, organization, or group under private management and organized in whole or in part for the temporary or continued care of offenders in a residential facility or placement of offenders in proctor homes.

(8) Offender proctor care: Includes care, food, and lodging provided on a 24 hour basis for offenders in a home approved by the OYA, as defined by these rules and OAR chapter 416, divisions 550 and 800.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04

416-530-0125

Certificate of Approval

(1) The certified proctor parents are recruited, trained, paid and supported in their efforts by the Private Youth Care Agency and monitored by the Private Youth Care Agency's professional staff.

(2) No Private Youth Care Agency will place offenders in a proctor home without a current, valid special certificate of approval issued by the OYA.

(3) In addition to compliance with these rules, Private Youth Care Agencies and their proctor homes must comply with the following provisions.

(a) Licensing standards of the Oregon Department of Human Services, or other agency recognized by the state of Oregon to issue a license for services.

(b) Contractual agreements between the Private Youth Care Agency and the OYA.

(c) Intergovernmental agreements between the OYA and other agencies, as applicable.

(d) In order to ascertain compliance with these standards, the OYA may examine the records and files of the Private Youth Care Agency, inspect and observe the physical premises of the proctor home, and interview offenders, Private Youth Care Agency staff, proctor parents, and persons in the community.

(4) Private Youth Care Agencies must utilize employees or volunteers whose presence does not jeopardize the health, safety or welfare of offenders. When making a determination about a person's suitability to work with offenders, the Private Youth Care Agency must consider the provisions of chapter 416, division 800 and all intervening circumstances and other background information to judge the person's fitness to work with offenders.

(5) If the applicant meets the requirements of these rules, the OYA will issue a special certificate to operate a proctor home under contract with a Private Youth Care Agency.

(a) This certificate must specify the type of care and/or service to be provided, the address of the premises to which the special certificate applies, the name of the Private Youth Care Agency under which the special certificate is activated, and other information deemed necessary.

(b) This certificate will automatically terminate upon the closure of the Private Youth Care Agency or when the contract between the Private Youth Care Agency and the proctor parent is terminated. The Private Youth Care Agency must immediately notify the OYA in writing when either of these situations occurs and the OYA must take necessary action to terminate the special certificate.

(6) The Private Youth Care Agency is responsible for ensuring that the proctor home meets these standards, or corrects deficiencies when they are noted. The OYA must agree in writing to any exceptions to these rules.

(7) If a proctor home fails to comply with these rules, the OYA may deny an application, place the home on inactive referral status, or suspend or revoke the special certificate, in accordance with the provisions of OAR 416-530-0090. The proctor parent may appeal this decision in accordance with the provisions of OAR 416-530-0090.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010, 420.810, 420.815, 420.840

Hist.: OYA 15-2004, f. & cert. ef. 11-12-04

416-530-0130

General Provisions for Proctor Parents

(1) The Private Youth Care Agency must ensure that its proctor parents meet the standards of these rules and OAR chapter 416, division 800.

(2) The Private Youth Care Agency must provide or cause to be provided structured supervision twenty-four (24) hours per day, seven days a week, to the offenders placed in proctor homes. The Private Youth Care Agency must provide specific proctor parent support services that enhance the proctor parents' ability to successfully meet the supervision needs of the offenders placed by the OYA.

(3) The Private Youth Care Agency must ensure that no more than three OYA offenders reside in any given proctor home at one time. In addition, no more than five total children (including the proctor parent's own children) may reside in one proctor home.

(4) Under no circumstances may offenders reside with youth served under the Private Youth Care Agency's other programs, including private pay placements and placements of youth from out-of-state, except for offenders placed through Interstate Compact with courtesy supervision provided by the OYA.

(5) On occasion to offer proctor parents respite from proctor care responsibilities, the total number of offenders per home may be increased, in a manner consistent with these rules, to the home's certified maximum.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010, 420.810, 420.815, 420.840

Hist.: OYA 15-2004, f. & cert. ef. 11-12-04

416-530-0140

Youth Offender Proctor Home Requirements

(1) The Private Youth Care Agency must ensure that its offender proctor homes meet the standards of these rules and OAR chapter 416, divisions 500 and 800.

(2) The Private Youth Care Agency must develop and maintain written agreements with proctor parents providing proctor care. These agreements must be approved by the OYA prior to placement of OYA offenders in the proctor home and must address the following:

(3) Supervision responsibilities:

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(A) Proctor parents may, with Private Youth Care Agency's prior written consent, schedule 48 hours per month of time away from offender care responsibility.

(B) At least one trained proctor parent or approved substitute must be on premises at all times that offenders are present in the home.

(b) Reporting requirements:

(A) Proctor parents must maintain daily required documentation and submit reports to Private Youth Care Agency as required on each offender in placement.

(B) Proctor parents with whom offenders are placed must contact Private Youth Care Agency staff immediately in the case of emergencies.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010, 420.810, 420.815, 420.840

Hist.: OYA 15-2004, f. & cert. ef. 11-12-04

416-530-0150

Combination of Care

(1) The Private Youth Care Agency or its proctor homes must not combine the care of offenders in OYA custody with boarding, day care, nursing, foster, or convalescent care for adults or children, except as authorized in writing by the OYA.

(2) If such combination of care is approved, the provisions of interagency agreements must be met in addition to the applicable statutes, administrative rules, and policies of all agencies involved.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010, 420.810, 420.815, 420.840

Hist.: OYA 15-2004, f. & cert. ef. 11-12-04

416-530-0160

Enforcement

In order to ascertain continued compliance with these standards, the OYA must have right of entry, privilege of inspection, and access to staff and all records of the Private Youth Care Agency and the offender proctor home.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010, 420.810, 420.815, 420.840

Hist.: OYA 15-2004, f. & cert. ef. 11-12-04

416-530-0170

Exceptions

The OYA may allow exceptions to these rules, unless a rule specifies that no exception is possible.

(1) Exceptions must be approved by the OYA Community Resources office.

(2) Exception requests must be made in writing, state the need for the exception, signed by the required decision-maker, and filed in the certification file. An exception is not effective until granted in writing.

(3) Exceptions must be accompanied by a written plan showing how the safety of the offenders in placement must be ensured while the exception is in effect.

(4) Each request for an exception must be evaluated on its own merits. Granting an exception does not set a precedent that must be followed by the OYA when evaluating subsequent requests for exceptions.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010, 420.810, 420.815, 420.840

Hist.: OYA 15-2004, f. & cert. ef. 11-12-04

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**Public Utility Commission
Chapter 860**

Adm. Order No.: PUC 15-2004

Filed with Sec. of State: 10-28-2004

Certified to be Effective: 10-28-04

Notice Publication Date: 9-1-04

Rules Amended: 860-027-0120, 860-034-0580

Subject: The Commission required incumbent local exchange carriers to follow the Federal Communications Commission's (FCC) October 1998 version for preservation of records. The amended rules adopt the FCC's most recent version dated October 2003. The primary change is the addition of §42.10, Public Availability of Information Concerning Interexchange Services.

Rules Coordinator: Diane Davis—(503) 378-4372

860-027-0120

Preservation and Destruction of Records

(1) Electric Utilities. Preservation of Records of Public Utilities and Licensees, Part 125, Chapter 1, 18 Code of Federal Regulations (April 1,

2001, edition) is hereby adopted and prescribed by the Commission for each electric utility with the following exception: Corporate and General, Organizational documents — An electric utility shall retain minute books of stockholders', directors', and directors' committee meetings for twenty-five years.

(2) Gas Utilities. The Preservation of Records of Public Utilities and Licensees, Part 225, Chapter 1, 18 Code of Federal Regulations (April 1, 2001, edition) is hereby adopted and prescribed by the Commission for each gas utility with the following exception: Corporate and General, Organizational documents — A gas utility shall retain minute books of stockholders', directors', and directors' committee meetings for twenty-five years.

(3) Steam Heat Utilities. The Preservation of Records of Public Utilities and Licensees, Part 125, Chapter 1, 18 Code of Federal Regulations (April 1, 2001, edition) is hereby adopted and prescribed by the Commission for each steam heat utility with the following exception: Corporate and General, Organizational documents — A steam heat utility shall retain minute books of stockholders', directors', and directors' committee meetings for twenty-five years.

(4) Large telecommunications Utilities. The Regulations to Govern the Preservation of Records of Communication Common Carriers, Part 42, 47 Code of Federal Regulations Chapter 1 (October 1, 2003, edition) is hereby adopted and prescribed by the Commission for each large telecommunications utility.

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

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.105

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 12-1985, f. & ef. 8-20-85 (Order No. 85-751); PUC 15-1986, f. & ef. 11-10-86 (Order No. 86-1144); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 1-1998, f. & cert. ef. 1-12-98; PUC 8-2000, f. & cert. ef. 5-26-00; PUC-19-2001, f. & cert. ef. 6-21-01; Renumbered from 860-028-0010; PUC 15-2004, f. & cert. ef. 10-28-04

860-034-0580

Preservation and Destruction of Records for Small Telecommunications Utilities and Type 2 Cooperatives

The Regulations to Govern the Preservation of Records of Communication Common Carriers, Part 42, 47 Code of Federal Regulations Chapter 1 (October 1, 2003, edition) is hereby adopted and prescribed by the Commission for all small telecommunications utilities and Type 2 telecommunications cooperatives.

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

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.225

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 3-1999, f. & cert. ef. 8-10-99; PUC 8-2000, f. & cert. ef. 5-26-00; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 15-2004, f. & cert. ef. 10-28-04

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**Secretary of State,
Archives Division
Chapter 166**

Adm. Order No.: OSA 5-2004

Filed with Sec. of State: 11-1-2004

Certified to be Effective: 11-1-04

Notice Publication Date:

Rules Amended: 166-001-0005, 166-500-0005

Subject: Current Model Rules of Procedure, amended by the Oregon Attorney General's office January 15, 2004, are hereby adopted by reference.

Rules Coordinator: Julie Yamaka—(503) 373-0701, ext. 240

166-001-0005

Model Rules of Procedure

The State Archivist adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act, dated January 15, 2004.

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

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

Hist.: OSA 4, f. & ef. 4-21-76; OSA 2-1986, f. & ef. 3-17-86; OSA 1-1988, f. & cert. ef. 8-10-88; OSA 1-1991, f. & cert. ef. 12-5-91; OSA 3-1994, f. 7-14-94, cert. ef. 7-15-94; OSA 4-2001, f. & cert. ef. 5-22-01; OSA 5-2004, f. & cert. ef. 11-1-04

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166-500-0005

Model Rules of Procedure

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, dated January 15, 2004, are adopted as the rules of procedure for the Administrative Rules Unit.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Administrative Rule Unit, Archives Division.]

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 183.335

Hist.: PRD 2-1988, f. & cert. ef. 2-5-88; PRD 6-1988, f. & cert. ef. 8-10-88; SOS-AD 1-1990, f. & cert. ef. 5-9-90; SOS-AD 2-1991, f. & cert. ef. 12-3-91; OSA 4-1993, f. & cert. ef. 11-10-93, Renumbered from 164-001-0005; OSA 8-1997, f. & cert. ef. 10-6-97; OSA 5-2001, f. & cert. ef. 7-5-01; OSA 5-2004, f. & cert. ef. 11-1-04

Adm. Order No.: OSA 6-2004

Filed with Sec. of State: 11-15-2004

Certified to be Effective: 11-15-04

Notice Publication Date: 8-1-04

Rules Adopted: 166-150-0135

Subject: Adopts a general records retention schedule for county and special district law enforcement records.

Rules Coordinator: Julie Yamaka—(503) 373-0701, ext. 240

166-150-0135

Law Enforcement

(1) **Activity Reports, Law Enforcement** Individual officer, shift, and other activity reports usually filed on a daily, weekly, monthly, or annual basis. Useful for reference, performance monitoring, compiling annual reports, planning and budgeting, and for briefing subsequent shifts or activities. Applies to various duties such as dispatch, confinement, investigations, and patrol. Information usually includes name, shift, date, activities, and various statistical categories for tracking the number of arrests, phone calls, mileage, and other indicators. Also includes monthly and annual law enforcement or uniform crime reports summarizing statistics on criminal activity and office operations. Information may include date, categories, totals, and related data. (Minimum retention: (a) Annual reports and monthly reports for years in which no annual report exists: Permanent (b) Other reports: 2 years)

(2) **Alarm Records** Records documenting the licensing, use, and response to security alarms. Licenses and permits usually contain name and address of holder, type of alarm, location, instructions to officers responding to call, names of individuals to be contacted when alarm sounds, fee charged, and related data. Other records may include alarm response reports and false alarm reports. False alarm reports are used to document ordinance violations concerning the number of false alarms in a given period. (Minimum retention: (a) Alarm licensing and permit records: 3 years after expiration or revocation (b) Other records: 3 years)

(3) **Animal Control Records** Records document activities relating to animal control. Records may include reports, logs, lists, cards, receipts, and related correspondence. Records may relate to dog licenses, lost and found animals, animals running at large, and bite reports. Dog license information usually includes name, address and phone number of owner, name and description of dog, vaccination dates, and related information. (Minimum retention: (a) Licensing records: 3 years after expiration (b) Other records and reports: Until superseded or obsolete)

(4) **Arrest Warrant Log Records** Records documenting the status of arrest warrants as served, unserved, or recalled by the court. May include logs, validation listings, checkout sheets, and related records. Logs usually include date of warrant, subject's name, charge, date, warrant served or recalled, and related information. (Minimum retention: Until superseded or obsolete)

(5) **Arrest Warrant Records** Records related to a written order made by the court on behalf of the commanding law enforcement officials to bring a specified individual before the court. May also include detainer requests, informational documents related to the wanted person, teletypes, and other records relevant to the service of warrants. Warrant information includes date, court, judge's name, individual's name and date of birth, charge, and related data. (Minimum retention: Until served, recalled, or cancelled by the court)

(6) **Bail Records** Records document the receipt of bail monies or recognizance bonds by the county as stipulated in ORS 135.720. Records may include logs of monies received, names of individuals posting bonds and inmate it applies to, staff member who accepted payment, and dollar totals of deposits made to the State Court. (Minimum retention: 3 years)

(7) **Block Home Program Records** Records documenting the application for and review, denial, or approval of block home designations. The

Block Home Program is designed to provide safety and protection to school age children. The department conducts background checks on applicants. Information often includes date, name, address, date of birth, Social Security number, educational and work background, police record check, approval or denial decision, and related data. (Minimum retention: (a) Approved application records: 2 years after withdrawal from program (b) Denied application records: 2 years)

(8) **Booking Records** Books, logs, or other records documenting the confinement and release of individuals held in an agency correctional facility. Information usually includes name, charges, date of confinement, date of release, physical condition, and related data. Booking records related to individuals known to be dead need not be retained. (Minimum retention: (a) Homicides: 20 years (b) Felonies: 10 years (c) Misdemeanors: 5 years)

(9) **Briefing Records** Records document internal communications between supervisors and shift workers or between staffs on different shifts to alert them to problems, issues, or activities. This can include jail, patrol, and other agency staff. Records may include briefing logs and teletype/computer messages. (Minimum retention: (a) Retain messages of interest to law enforcement agency not warranting inclusion in INCIDENT CASE FILES or other record series: 1 year other record series: 1 year (b) Retain all other messages: Until read)

(10) **Bulletins from other Agencies** Bulletins, circulars, and related records received from federal, state, other state, and local law enforcement agencies. Usually contains descriptions and photographs of fugitives, missing persons, or stolen property. May also include other information of interest to the department. (Minimum retention: Until superseded or obsolete)

(11) **Chaplain/Religious Counsel Records** document the role of the agency or jail chaplain/religious counsel, volunteer chaplains, or groups that volunteer their time to the agency for religious purposes. Duties may include counseling of staff and/or inmates, counseling of family members of staff/and or inmates, victim's assistance, death notifications, crisis intervention, and special services, including weddings and funerals. Records may include individual guidance records, schedules, activity reports, authorizations of inmate articles (i.e. prayer feathers, medicine bags, wedding rings, etc.), and marriage and death records. (Minimum retention: (a) Retain inmate counseling records: 3 years after inmate release (b) Retain all other counseling records: 1 year)

(12) **Civil Emergency/SWAT Team Records** Records document the planning for and performance of hostage negotiations, riot response, bomb threats, or other tactical situations. Records may include maps rosters, equipment inventory, training records, and situation reviews. (Minimum retention: 3 years)

(13) **Civil Enforcement Case Files Record** of actions taken relating to a specific civil case. Information may include attempts at service, actual service information, and documentation of enforcement actions taken under the provisions of the order. (Minimum retention: 3 years after action completed)

(14) **Communications/Dispatch Logs** Logs documenting incoming and outgoing communications including radio, telephone, computer aided dispatch, and teletype. Information may include date and time, subject, location, response, message, and other data depending on type of transmission. (Minimum retention: 1 year)

(15) **Computer Inquiry Records** Logs or other hard copy records documenting requests made to other agencies involving missing persons, wanted persons, stolen vehicles, and other subjects. (Minimum retention: Until superseded or obsolete)

(16) **Computer Validation Records** Logs or similar hard copy records detailing validation requests and proof of verification for NCIC or other law enforcement information networks. Useful to document maintenance of network standards. (Minimum retention: 5 years or until audited by NCIC or other applicable law enforcement network, whichever is shorter)

(17) **Concealed Weapons Permit Records** Records documenting issuance of concealed handgun licenses and renewals as specified in ORS 166. Records include license applications, license renewal applications, copies of identification, background check results, license revocations and denials, and related records. Information must include the applicant's legal name, current address and telephone number, date and place of birth, hair and eye color, height and weight, applicant's residence address or addresses for the previous three years, photograph of applicant, fingerprints of applicant, and applicant's signature. (Minimum retention: (a) Revoked permits: 4 years after revocation or denial (b) All other records: 2 years after expiration or transfer of permit)

(18) **Crime Analysis Records** Records documenting department efforts to anticipate, prevent, or monitor possible criminal activity. May

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include reports, statistical summaries, trend or prediction information, photographs, sound and video tape recordings, and related documents. Subjects often include crime patterns or modes of operation, analysis of particular crimes, criminal profiles, forecasts, movements of known offenders, alerts from other agencies, and others. (Minimum retention: (a) Major crime analyses or studies: 10 years (b) Other records: Until superseded or obsolete)

(19) **Crime Prevention Community Policing Organization Records** Mailing lists, plans, evaluations, notes, reports, and other records documenting community organizations, associations, individual volunteers, and others engaged in or interested in crime prevention efforts. Information is also used to develop community support for law enforcement programs and events. Records include presentations, publications, brochures, and newsletters. (Minimum retention: Until superseded or obsolete)

(20) **Crime Prevention Community Policing Event Records** Records document annual or one-time events organized by the agency or participated in where personnel are available to answer questions and provide educational information. Examples include National Night Out, safety fairs, bicycle rodeos, and open houses. Records include site information, schedules, volunteer rosters, and event evaluations. (Minimum retention: (a) Records of events considered significant and/or historical by local officials: Permanent (b) Retain all other event records: 1 year)

(21) **Crime Prevention and Community Policing Program Records** Records documenting department efforts to train citizens in crime prevention. May contain training and media presentation records including lesson plans, outlines, tests, evaluations, speeches, and related records. Subjects usually include neighborhood watches, home security, and others. (Minimum retention: (a) Retain significant program records: 5 years (b) Retain class enrollment and attendance records: 2 years (c) Retain other records: 1 year)

(22) **Crime Prevention Security Survey Records** Records documenting citizen requested officer surveys of homes and businesses and subsequent recommendations related to security. Usually contains a detailed checklist of problems or security defects. Subjects often includes areas of potential break in, blocked exits, landscaping that can hide crime, and similar topics. Survey usually is compiled into a report that is sent to the owner or renter. (Minimum retention: 2 years)

(23) **Crime Prevention Vacation House Inspection Records** Records documenting the inspection of homes and other properties while the occupants are away. Information often includes name, address, date received, vacation beginning and ending dates, emergency contact information, special conditions at the house or property, dates and times officers checked the house or property, and related data. (Minimum retention: 30 days after inspections end)

(24) **Criminal Arrest History Records** Records documenting information on the accumulated criminal arrest history of individuals which may be useful in current or future investigations. Records may include summary sheets or cards, arrest reports, fingerprint cards, mug shots, and related documents. Information often includes name, aliases, residence, sex, age, date and place of birth, height, weight, hair and eye color, race, scars, marks, tattoos, abnormalities, date of arrest, offense committed, habits, closest relatives or friends, and more. Records may be destroyed earlier if individual is known dead. (Minimum retention: (a) Homicides: 20 years (b) Felonies: 10 years (c) Misdemeanors: 5 years)

(25) **Criminal History Dissemination Records** Logs and other records documenting the dissemination of criminal histories and other law enforcement information to other agencies or criminal information systems. May include teletype and computer message logs. Information includes date of release, subject of information, recipient of information, reason information was requested, and identification numbers. (Minimum retention: Until case completed or suspended)

(26) **Criminal Intelligence System Database Records** Records documenting possible and proven criminal activity by individuals, groups, organizations, and businesses for use by local government law enforcement agencies. Information is categorized into file groupings as defined by OAR 137-090-0080 after collection and evaluation. Retentions are based on procedures detailed in OAR 137-090-0160. Includes investigatory reports, statistical reports, correspondence, memoranda, and related records. Information includes suspect identification, alleged activity, location, date, source validity, and other data. Sources include law enforcement and regulatory agencies, and private citizens. (Minimum retention: (a) "Permanent Files" as defined by OAR 137-090-0080: 5 years (b) "Temporary Files" as defined by OAR 137-090-0080: 1 year (c) "Working Files" as defined by OAR 137-090-0080: 30 working days)

(27) **Debriefings Records** documenting law enforcement operations, which are distributed in order to improve communication. Records include, but are not limited to, mission sheets, after action reports and operations order records. (Minimum retention: 3 years)

(28) **Detoxification Confinement Logs** Listing names of individuals held because of drunkenness and released when sober. Includes dates and times confined and released, name of individual, and related information. (Minimum retention: 2 years)

(29) **Dog Handler Reports** Records documenting training and performance of dogs involved in law enforcement operations. Note: For limitations, see ORS 131.125, 131.155, 166.715-177.735, and other applicable statutes. (Minimum retention: 1 year after statute of limitations on case expires)

(30) **Electronic Home Detention Records** Records documenting the application and use of electronic monitors for inmates selected for electronic home detention monitoring. Documentation includes computerized tracking reports, printouts and computer schedules; documentation on offender violations, including unauthorized absences or activities; notifications to apprehend and control any absconding offenders; system troubleshooting notations and other related correspondence. (Minimum retention: 3 years after removal of monitor)

(31) **Emergency Telephone Calls** Continuous Audio Files Records document incoming emergency calls, law enforcement and emergency dispatches, radio activity, and 9-1-1 calls. Files are maintained on a 24 hour basis. Recordings of serious incidents may warrant longer retention for legal reasons. These should be transferred onto a separate medium and retained until legal action is resolved. (Minimum retention: 7 months)

(32) **Equipment Issued/Quartermaster Records** Records documenting equipment issued to an agency law enforcement agency and other agency personnel. Items include but are not limited to handcuffs, keys, uniforms, badges, personal protective and fire fighting equipment, and lockers. May include inventories, optional equipment lists, data sheets, and other records. Information often includes date, employee name, number, and section, description of equipment, and related data. (Minimum retention: Until superseded or obsolete)

(33) **Expunged or Sealed Records** Records documenting the arrest and/or conviction of a person who petitions and is granted by the court an order sealing or otherwise disposing of any related records according to ORS 137.225. "Upon entry of such an order, the applicant for purposes of the law shall be deemed not to have been previously convicted, or arrested as the case may be, and the court shall issue an order sealing the record of conviction or other official records in the case, including the records of arrest whether or not the arrest resulted in further criminal proceeding." Also applies to records related to juveniles as outlined in ORS 419A.260 and 419A.262. (Minimum retention: (a) Dispose expunged records according to the directive of the court (b) Retain expungement orders 75 years or according to the directive of the court (c) Retain sealed records 75 years or according to the directive of the court)

(34) **Field Interrogation Reports** Informational reports written by a law enforcement officer related to individuals, events, or vehicles for which the officer does not have probable cause for enforcement. Information usually includes name and address of person contacted, physical description of person or vehicle, officer's name, location of contact, date and time, witnesses, reason for contact, and related data. (Minimum retention: 1 year)

(35) **Fingerprint Cards** Cards containing fingerprints, palmprints, toeprints, and other personal identifiers of arrested individuals. Used for identification and apprehension of suspects in criminal investigations. May also include fingerprints of private security personnel working in an area. Information often includes name, address, date and place of birth, Social Security number, alias, occupation, employer, name of individual taking prints, and related data. Fingerprint cards of individuals known to be dead need not be retained. Fingerprint cards are currently transmitted to the Oregon State Police and maintained there. (Minimum retention: Until transmission to the Oregon State Police verified)

(36) **Fingerprint Cards, Latent** Cards containing latent fingerprints and palmprints found at crime scenes without identification of suspects. These are compared against cards on file at the agency. Usually contains information related to the crime, location, date and time, and other details of the case. (Minimum retention: (a) Unnatural death: 75 years (b) Sexual felonies defined in ORS 131.125: 27 years (c) Other felonies: 6 years (d) Other offenses: 3 years)

(37) **Handgun Dealers' Sales Records** Records documenting purchases of handguns from dealers. May include duplicate register sheets mailed by the dealer to the law enforcement agency and triplicate register sheets mailed by the dealer to the State Police for criminal records checks

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and then forwarded to the agency. Information includes series number, sheet number, sales person, Date and time, city/county, make, serial number, caliber, name of purchaser, date of birth, address, height, occupation, race, color of eyes and hair, local address (if traveling), and signatures of purchaser and sales person. ORS 166.412(7) states that "the department may retain a record of the information obtained during a request for a criminal records check for no more than five years." (Minimum retention: 3 years)

(38) **Impounded and Abandoned Vehicle Records** Records documenting vehicles impounded by the department related to accidents, abandonment, recovered stolen vehicles, vehicles used in the commission of crimes, and other reasons. May include reports, notifications, information cards or sheets, receipts, and related records. Information often includes the make, model, year, color, identification number, tag number, and condition of the vehicle and contents, reason for impounding, location of impoundment, charge, if any, towing company used, release conditions, name and address of individual to whom vehicle was released, and other data. (Minimum retention: 3 years after disposition for records not included in Incident Case Files)

(39) **Incident Case File Indexes** Indexes to incident case files used as cross references between case numbers, names, dates, modus operandi, and other descriptive information. (Minimum retention: Until superseded or obsolete)

(40) **Incident Case Files** Central case files documenting complaints or other actions or incidents investigated by the department. Usually filed by case number. Records may include investigative reports, fingerprint cards, original arrest reports, supplemental reports, photographs, correspondence, teletypes, court orders, court dispositions, officer notes, laboratory reports, DUII test records including chemical analyses (also known as intoxilyzer or breathalyzer test records), citizen arrest certificates, copies of warrants, search warrants, and booking sheets, property/evidence reports, custody reports, and other related documents. Information usually includes suspect identification, alleged activity, location, date, validity of source information and other data. Sources include law enforcement and regulatory agencies and private citizens. (Minimum retention: (a) Retain cases involving crimes with no statutes of limitations: 75 years after case closed (b) Retain protective custody files: until the minor's age of majority or emancipation (c) Retain Missing Persons Reports: Until cleared (d) Retain all other cases: until statute of limitations expires)

(41) **Indemnity Bonds** Copies of insurance bonds issued to indemnify the law enforcement agency against claims of wrongful actions in civil seizure cases. (Minimum retention: 2 years after seizure has been completed and a return has been made to the court of issuance)

(42) **Informant Case Files Records** documenting information about informants used by department personnel. May include reports, correspondence, payment records, fingerprint cards, signature cards, letters of understanding on informant activities, and related records. (Minimum retention: Until superseded or obsolete)

(43) **Inmate Accountability Records** Logs, lists, rosters, and other records documenting inmate counts, cell locations, and status, as well as related information. May include logs detailing status of individual inmates such as those awaiting action or on hold status, released on their own recognition, or released on security. May also include rosters documenting the location of all inmates by head counts at regular intervals. (Minimum retention: 1 year)

(44) **Inmate Case File Indexes** Indexes used to access inmate case files. Usually cross referenced by name, case number, and other identifiers. (Minimum retention: Until superseded or obsolete)

(45) **Inmate Case Files Records** documenting non-medical information on inmates confined in an agency correctional facility. Often contains date of entry, date of release, incident reports, release receipt indicating return of property, court commitment and release orders, behavioral information, and other relevant information concerning the arrest and confinement of an individual. (Minimum retention: 3 years after release)

(46) **Inmate Grievances Records** documenting the receipt of, investigation of and actions taken in regard to inmate grievances. (Minimum retention: 3 years after last action)

(47) **Inmate Meal Records** Records documenting menus used to plan and schedule inmate meals. May include listings of those inmates who received meals. Information may include month, day, meal, menu, inmates served, and related data. (Minimum retention: 6 months)

(48) **Inmate Medical Records** Records documenting outpatient medical treatment given to inmates. Often contains treatment log, prescriptions, health questionnaires, laboratory reports, x-ray reports, medical reports from other facilities, medication records and related records. Information

may include inmate's name, date of treatment, description of treatment, medications given and information regarding the medication dispensed and related data. (Minimum retention: 6 years after inmate release)

(49) **Inmate Program Records** Records documenting the education, recreation and miscellaneous programs that inmate participated in while at the facility. (Minimum retention: 3 years)

(50) **Inmate Telephone and Mail Records** Logs and other records documenting telephone calls and mail sent and received by inmates. Information may include name of inmate, date and time of telephone call or mail, and related data. (Minimum retention: 1 year)

(51) **Inmate Visitor Records** Records documenting information about visitors to inmates confined in an agency correctional facility. May include logs, request slips, and related records. Information often includes date, time in, visitor's signature and address, object of visit, time out, and related data. (Minimum retention: 1 year)

(52) **Inmate Work Programs Records** documenting the control of and participation of inmate work programs. (Minimum retention: 3 years)

(53) **Internal Investigations Case Files** Records documenting investigations of department personnel for violations of laws, rules, or policies and may include findings and dispositions of investigations. Records often contain complaints, correspondence, investigatory reports, interviews, hearing summaries and testimony, and related documents. Information usually includes name of employee investigated, reason, location of violation, date, accomplices' names and addresses, witnesses' names and addresses, action taken, and related data. (Minimum retention: (a) Investigations resulting in Termination: 10 years after employee separation (b) Investigations resulting in disciplinary action or exoneration: 2 years after resolution (c) Unfounded Investigations: 1 year)

(54) **Jail Monitoring Records** Records include audio and video recordings of prisoners booked into the jail facility. Video recordings are also made during inmate altercations and incidents where the Corrections Emergency Response Team (C.E.R.T.) members are utilized for inmate control. These recordings typically contain footage of use of force that are used in staff training sessions, but may also serve as evidence in criminal proceedings. (Minimum retention: (a) Prisoner booking videos: 30 days (b) C.E.R.T. training videos: Until superseded or obsolete (c) C.E.R.T. videos as evidence in criminal proceedings: destroy by order of the court)

(55) **Jail Canteen, Commissary or Kitchen Records** Records documenting the routine operations and control of jail canteens, commissary and kitchens. Includes inventory control records, inmate accounting records, and other related files. (Minimum retention: 3 years or until audited, whichever is longer)

(56) **Juvenile Offender/Victim Restitution Records** Records documenting the facilitation of restitution for crime victims of first time juvenile offenders. Typical cases may include criminal mischief, vandalism, minor assault, theft, and harassment. Information may include name, address, and phone number of person filing complaint, case number, date of activity, narration of the complaint, name of offender, date case closed, and other data. (Minimum retention: 5 years after last action, or youth reaches age of majority, whichever is longer)

(57) **Juvenile Temporary Custody Records** Records documenting children taken into temporary custody by the department as defined in ORS 419B.150 through ORS 419B.175. The action is not considered an arrest. Information may include the name, age, and address of the child, the name and address of the person having legal or physical custody of the child, reasons for and circumstances under which the child was taken into temporary custody, and other data. SEE ALSO Delinquent Case Files, Adjudicated (Formal); and Delinquent Case Files, Informal in the County Juvenile section. (Minimum retention: 3 years)

(58) **Lost and Found Property Records** Records documenting agency receipt and maintenance of lost and found or abandoned property such as money, bicycles, automobiles, and other items not related to a crime. Includes receipts, inventory lists, destruction logs, property reports, and related records. (Minimum retention: 2 years after disposition)

(59) **Maps, Law Enforcement** Maps and related records maintained for reference and for tracking various trends. Examples include but are not limited to Neighborhood Watch Program maps, Block Home Program maps, street number location maps and books, parking meter maps, and maps plotting reported crimes in a given area. (Minimum retention: Until superseded or obsolete)

(60) **Marine Enforcement Reports** Records document the marine enforcement activities of the county sheriff's department. Information includes types of waterway and watercraft violations, citations issued and other related information. (Minimum retention: (a) Annual Reports: 5 years (b) Monthly Reports: Retain until annual report created)

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(61) **Master Name Index Records** Records documenting information on each individual who has been field interrogated or arrested, suspects or accomplices in crimes, victims, complainants, and witnesses to incidents. Information may include name, address, date of birth, race, sex, date and time of incident or contact, incident number, and related data. (Minimum retention: Until superseded or obsolete)

(62) **Mug Shots** Photographs and negatives of arrested individuals used for identification and apprehension of suspects in criminal investigations. Mug shots of individuals known to be dead need not be retained. (Minimum retention: (a) Retain homicides: 20 years (b) Retain felonies: 10 years (c) Retain misdemeanors: 5 years)

(63) **Neighborhood Dispute Resolution Records** Records documenting a county's dispute resolution program to handle complaints by citizens about concerns or disputes with neighbors or merchants. Typical cases may include animal control, landlord/tenant issues, noise, harassment, property disputes, and business/consumer issues. Records may include budget, activity, and statistical reports, mediation training information, evaluation and intake records, service referrals, resolution agreements, and follow-up surveys. Information may include name, phone number, and address of person filing complaint, case number, date of activity, narration of request or complaint, name and address of offender, action taken, and other data. (Minimum retention: (a) Retain case records 5 years after last action (b) Retain other records 2 years)

(64) **Officer Notes** Notes written by officers during the course of a shift containing information which may or may not be included in an official report. May pertain to contacts, incidents, unusual circumstances, and other subjects. Useful for referral in writing reports and testifying in court. Information includes names, dates, times, vehicles, activities, locations, and related data. Note: Officer notes recorded on handheld electronic organizers (e.g. Palm Pilots) are public records under ORS 192. Information on electronic organizers is subject to the same retention as the paper record unless the information is kept in another format for the duration of the retention period. (Minimum retention: 2 years)

(65) **Officer Weapon Registration Records** Records documenting weapons assigned to law enforcement officers. Information includes officer's name, and the make, model, serial number, and caliber of the weapon. (Minimum retention: Until superseded or obsolete)

(66) **Patrol Car Camera Videotapes Records** document patrol activities. Patrol officers may manually activate cameras when calls come in or cameras may automatically activate upon rapid vehicle acceleration or deceleration. (Minimum retention: (a) Retain tapes used as evidence until case reaches final disposition (b) Retain tapes used for internal investigations until investigation ends (c) Retain all other tapes 30 days)

(67) **Pawn Broker and Second Hand Dealer Reports** Reports submitted to the department documenting merchandise bought and sold by dealers. Useful in tracing stolen items. Information includes name, address, identification, and personal description of pledgor, as well as the date, dealer's name, and description of article. (Minimum retention: 2 years)

(68) **Peer Court Records** Records documenting the peer court system where youths who have committed certain first time misdemeanors or violations are judged through a court system of their peers (aged 12-17 years). Records may include policy and procedures manuals, budget, activity and statistical reports, guidelines and instructions for participants, applications to participate in the program, juvenile consent form, intake interview form, defendant questionnaire, summary report, attorney's analysis, jury verdict record, bailiff record, clerk's record, community service log, judge's notes, officer's status reports, defendant evaluation, parent evaluation, and related documentation. SEE ALSO Policy and Procedure Manuals and Guidelines in the Administrative section. (Minimum retention: (a) Case records: 5 years after final disposition of case, or youth reaches age of majority, whichever is longer (b) Participant guidelines and instructions: Until superseded or obsolete (c) Other records: 2 years)

(69) **Photo Identification Records** Photographs and other records used to identify agency employees, private security personnel, contract workers, and others. May include photographs taken for agency identification cards, driver's license photographs, and information such as name, date of birth, physical description, identification number, driver's license number, and other data. (Minimum retention: Until superseded or obsolete)

(70) **Photo Radar Records** Records documenting traffic infractions by drivers that have been photographed by the county sheriff's photo radar equipment. Records may include photographic negatives and prints, copies of citations, copies of drivers' licenses, forms to dismiss, logs, and related documentation. (Minimum retention: (a) Retain photo radar citations issued and logs: 2 years (b) Retain photo radar citations not issued 30 days)

(71) **Polygraph Records** Records documenting polygraph tests given to criminal suspects, prospective employees and others. Includes pre-examination records, examination questions for individuals interviewed, statements of consent, polygraph analysis reports, examiner's original test questions, examination chart tracing reports, polygraph results charts, conclusions, interviewee statements, and background information. (Minimum retention: (a) Retain cases involving crimes with no statute of limitations 75 years (b) Retain all other cases 1 year after statute of limitations expires)

(72) **Property and Evidence Control and Disposition Records** Records used to track property and evidence coming into department possession. Documents receipt, storage, and disposition of personal property and physical evidence from defendants, victims, and others. May include evidence photo-graphs documenting crime scenes, accidents, and other incidents. Records often include receipt forms, evidence control sheets, property reports, destruction lists, property consignment sheets, seized firearm logs, homicide evidence inventories, and other documents. Information usually includes case number, tag number, date and time, property or evidence description, storage location, release date, and other data. (Minimum retention: (a) Retain cases involving crimes with no statute of limitations 75 years (b) Retain all other cases 1 year after statute of limitations expires)

(73) **Property Registration Records** Records documenting the registration of property for identification in case of theft, loss, or burglary. Property includes but is not limited to bicycles, televisions, cameras, stereos, and guns. Information may include name, address, and phone number of owner, date, description of property, serial number, and related data. (Minimum retention: Until registration is expired, superseded or obsolete)

(74) **Property Sales/Deed Records** Documents sale and conveyance of real and personal property by the enforcement agency. May include certificates of levy, notices of sale, publication proofs, mailing receipts, copy of judgment and execution, certificate of sale, return of service, and copy of deed issued. (Minimum retention: 6 years)

(75) **Scene Reconstruction** Visuals Exhibits and other visual aids created for use in court. Crime scenes were reconstructed and photographed in order to visually present information. (Minimum retention: (a) Retain cases involving crimes with no statute of limitations: Retain 75 years after case closure (b) Retain all other cases: Retain 1 year after statute of limitations expires)

(76) **Subpoenas Records** document subpoenas issued to law enforcement personnel to appear in court for the purpose of testifying. Information contains date of issuance, date requested, and location. (Minimum retention: Until court appearance)

(77) **Surveillance Tapes Records** documenting the routine monitoring of courts and other facilities through the use of video recordings. These recordings contain daily footage of activities in the courthouse or other county facilities and may also serve as evidence in criminal proceedings. (Minimum retention: (a) Retain tapes used as evidence: until case reaches final disposition (b) Retain tapes used for internal investigations: until investigation ends (c) Retain all other tapes: 30 days)

(78) **Teletype Messages** Incoming and outgoing teletype messages concerning a variety of subjects of interest to the department. Subjects include incidents, meetings, arrests, warrant confirmation and others. Information includes date, time, originating agency, and text. (Minimum retention: (a) Retain messages of interest to law enforcement agency not warranting inclusion in INCIDENT CASE FILES or other record series: 1 year (b) Retain all other messages: Until read)

(79) **Towed Vehicle Records** Rotation lists and related records documenting tow truck requests and responses. Information usually includes date, name of requestor, name of towing company called, location, and other data. Records may also include documentation of vehicles towed from private property at the request of citizens. This information is used to prevent towed vehicles from being reported as stolen. (Minimum retention: 1 year)

(80) **Traffic and Other Citation Logs** Logs listing various information related to citations issued by the department. Usually includes type of citation, ticket number, name of violator, date of issue, and officer's name. (Minimum retention: 1 year)

(81) **Traffic and Other Citations** Department copies of citations issued for traffic, motor vehicle, and other violations. Includes Uniform Traffic Citations, parking citations, and others. Information includes city and county, date and time, name and address, date of birth, sex, occupation, license number, state, year, make and model of vehicle, location of violation, law allegedly violated, conditions, name of officer issuing citation, and related data. (Minimum retention: 2 years)

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(82) **Traffic Violation Warning Records** Records documenting warnings issued for traffic violations. Often used to determine repeat offenders and for follow-up investigations. Information usually includes date, time, category, name, address, phone number, date of birth, race, sex, hair and eye color, height, weight, Social Security number, drivers license number, make and model of vehicle, location of violation, violation, signatures, and related data. (Minimum retention: 1 year)

(83) **Transportation of Prisoner Records** Records documenting the movement of prisoners from one place to another. Includes times, dates, employee in charge, prisoners transported, locations where prisoners were transported, etc. (Minimum retention: 3 years)

(84) **Used Firearm Transfer Records** Records document the sale or transfer of a firearm. Information includes business name and address, individual purchasing or trading firearm, time and date of transaction, firearm description, including serial number, caliber, form of identification presented by the seller/trader, and dealer and seller/trader signatures and phone numbers. (Minimum retention: 1 year)

Stat. Auth.: ORS 192 & 357

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

Hist.: OSA 6-2004, f. & cert. ef. 11-15-04

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

Adm. Order No.: ELECT 8-2004

Filed with Sec. of State: 10-29-2004

Certified to be Effective: 10-29-04

Notice Publication Date: 10-1-04

Rules Adopted: 165-007-0270

Subject: This proposed rule establishes a procedure for the conduct of administrative recounts of selected ballots following an election conducted in this state. An administrative recount ordered under this rule would be directed only when unanticipated circumstances at the election put the accuracy of the vote tally equipment used in the county in question.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-007-0270

Administrative Recounts

(1) The purpose of this rule is to establish a procedure for the conduct of administrative recounts of selected ballots following an election conducted in this state. The Secretary of State, as the chief elections officer for the State of Oregon, has the responsibility to adopt rules that the Secretary considers necessary to facilitate and assist in achieving a maximum degree of correctness, impartiality and efficiency in administration of the election laws. This rule is intended to carry out that responsibility by providing a mechanism for selective recounts to confirm the accuracy of the automated vote tally systems used to count ballots.

(2) The Elections Division may, between the 20th and 23rd day after the election, direct the county elections official to conduct a recount of an office or measure, or portions of the votes cast for an office or measure, as selected by the Division. Administrative recounts ordered under this subsection shall be directed only when unanticipated circumstances at the election put the accuracy of the vote tally equipment used in the county in question. Any such recount shall be conducted in accordance with applicable procedures in ORS Chapter 258 and as stated by the Division in the order directing the recount. All recounts conducted under this rule shall be conducted by hand. Administrative recounts of tally machines ordered under this subsection shall be limited to no more than 1,000 ballots in any one county. A Division order to conduct an administrative recount shall include a procedure for counties that process ballots by batch, rather than precinct. The procedure for "batch counties" shall avoid requiring the county to conduct an administrative recount of a specific precinct. Counties that process ballots by hand will be required to conduct a hand count and a machine count of randomly selected ballots and compare the results. Notwithstanding ORS 258.161, 258.280 and 258.290, the cost of conducting a recount under this rule shall be borne by the county in which the recount is conducted.

(3) Upon completion of the recount, and not later than 30 days after the election, the county elections official shall report on the results of the recount to the Division, together with any other information requested by the Division.

(4) A county elections official may choose to conduct an administrative recount of a selected office or measure and notify the Division of that

decision in writing not later than the 23rd day after the election. In this event, the Division will not direct the county to conduct an administrative recount under the procedures of this rule. If the county elections official chooses to conduct an administrative recount under this section, the results of the recount must be reported to the Division not later than the 30th day after the election.

(5) The procedures described in this rule may be implemented only if a county is not required to conduct either an automatic recount under ORS 258.280 and 258.290 or a partial or full demand recount under ORS 258.161. In the event that a recount under either of these procedures is commenced, any administrative recount is terminated.

(6) Recounts conducted under this rule shall not be used to alter the results obtained by the official tally of ballots, unless the procedures in ORS 258.161 are followed to make a demand for recount, either by a qualified person or the county elections official.

(7) For purposes of this rule, an "administrative recount" is a hand recount of selected offices or measures by hand to verify the accuracy of the vote tally equipment. It is not intended to provide a basis for changing the outcome of the results determined by the vote tally equipment, or to substitute for the procedures in state law for the conduct of automatic or demand recounts. Persons interested in challenging the vote tallies in particular races or measures must utilize the procedures in ORS 258.161 and 258.171 in order to have the results of the recount become the official returns.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 258.150

Hist.: ELECT 8-2004, f. & cert. ef. 10-29-04

**Teacher Standards and Practices Commission
Chapter 584**

Adm. Order No.: TSPC 10-2004(Temp)

Filed with Sec. of State: 10-20-2004

Certified to be Effective: 10-20-04 thru 3-1-05

Notice Publication Date:

Rules Amended: 584-060-0011, 584-060-0161, 584-070-0130, 584-070-0410, 584-080-0171, 584-100-0071

Subject: 584-060-0011: Amend existing rule to allow for more than one renewal.

584-060-0161: Amend existing rule to restore Transitional License to three year license from one year license.

584-070-0130: Adopt temporary rule allowing for emergency School Counselor License.

584-070-0410: Adopt temporary rule allowing for emergency School Psychologist License.

584-080-0171: Adopt temporary rule allowing for emergency School Administrator License.

584-100-0071: Amend existing rule to remove provision not allowed by federal law.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-060-0011

Initial Teaching License

Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted an Initial Teaching License. This license is issued for three years plus time to the applicant's next birth date and is renewable once under conditions specified below. It is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty.

(1) To be eligible for an Initial Teaching License, an applicant must satisfy all of the following general preparation requirements:

(a) A bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission.

NOTE: Awarding of a higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure.

(b) Completion in Oregon or another U.S. jurisdiction of an initial teacher education program approved by the commission, or completion of a U.S. or foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program.

(c) A passing score as currently specified by the commission on each of one or more tests of subject mastery for license endorsement, except for tests waived due to special academic preparation satisfactory to the com-

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mission together with five years of experience teaching the specialty on a license valid for the assignment in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license.

(d) A passing score as currently specified by the commission on a test of basic verbal and computational skills, unless the applicant held an Oregon educator license before 1985 or has a regionally accredited doctor's degree.

(e) A passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission.

(2) To be eligible for an Initial Teaching License, an applicant must satisfy a recent experience requirement in one of the following ways during the three-year period immediately preceding application:

(a) Completion of an approved teacher education program; or

(b) Beginning and completion in a public school or regionally accredited private school in a U.S. jurisdiction of at least one academic year as a full-time licensed educator or two consecutive years as a half-time licensed educator on any license appropriate for the assignment, or equivalent experience as in a state or federal school; or

(c) Receipt of 6 semester hours or 9 quarter hours of academic credit, germane to teaching licensure, from a regionally accredited college or university; or

(d) Completion of one hundred eighty days of teaching in Oregon schools on a teaching license valid for the assignment; or

(e) Compliance with provisions of OAR 584-048-0020, Renewal of Teaching Licenses — Special Provisions; or

(f) A combination of such experience and credit may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days of successful experience.

(3) To be eligible for an Initial Teaching License, an applicant must furnish fingerprints in the manner prescribed by the commission.

(4) The Initial Teaching License can be renewed for three years upon completion of recent educational experience verified by either:

(a) Completion of one academic year of educational work in any capacity at full time or two consecutive years at half-time, or 180 days of substitute teaching, in one or more of the following organizations: a public school or a regionally accredited private school in any U.S. governmental jurisdiction, a state or federal school in Oregon, an Oregon private elementary or secondary school registered by the state Department of Education, an Oregon private proprietary career school licensed by the superintendent of public instruction, a degree-granting college or university in Oregon, a special state-supported school in Oregon, the state Department of Education itself, the Teacher Standards and Practices Commission, the Department of Human Resources, a juvenile court school in Oregon, an Oregon education service district, or a school operated by the U.S. Department of Defense; or

(b) Completion of 6 semester hours or 9 quarter hours of preparation completed in an approved institution during the life of the current teaching license.

NOTE: See OAR 584-048-0020 for Special Provisions for renewal of an Initial Teaching License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-143, 342.153, 342.165 & 342.223-232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05

584-060-0161

Transitional Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Transitional Teaching License.

(2) This license is issued for three years and is non-renewable except under extraordinary conditions described below in subsection (7) of this rule.

(3) This license is valid for regular teaching with any employer at one or more designated levels in one or more designated specialties and for substitute teaching at any level in any specialty.

(4) Upon expiration of the Transitional Teaching License, recipients of this license must meet the requirements of the Initial Teaching License for which they may apply at any time. Applicants are not eligible for a Restricted Transitional License.

(5) To be eligible for a Transitional Teaching License, an applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character

and mental and physical health necessary for employment as an educator; and

(b) Hold a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure; and

(c) Complete an initial teacher education program in any state-approved teacher preparation program in any U.S. jurisdiction, or completion of a foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program. Oregon graduates are not eligible for a Transitional Teaching License; and

(d) Demonstrate knowledge of applicable civil rights laws. An applicant from out of state may submit an affidavit for the first Oregon license assuring that the applicant has read Discrimination and the Oregon Educator and has completed the self-study questions. The applicant must complete the course or workshop prior to any further licensure; and

(e) Furnish fingerprints in the manner prescribed by the commission. (See OAR 584-036-0062 for Criminal Records Check Requirement); and

(f) Obtain an approved first aid card within 90 days of receiving the license.

(6) Applicants who have completed programs from states other than Oregon will be required to submit a C-2 form, in addition to transcripts, verifying completion of the teacher education program. A teaching license issued by the U.S. Department of Defense will be considered as a license from another state. Completion of alternative routes teaching programs through school districts or other avenues are subject to Executive Director approval.

(7) When the Executive Director determines that extenuating circumstances have prevented the applicant from completing requirements for the Initial Teaching License, a restricted extension may be issued for up to one year upon joint application from an educator and the employing district. The applicant must provide an explanation of the circumstances which make the request necessary. The co-applicant district must ensure that the applicant will meet all requirements for the Initial Teaching License upon expiration of the restricted Transitional Teaching License.

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

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127 & 342.165

Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05

584-070-0130

Emergency School Counselor License

(1) An Emergency School Counselor License may be issued when a school district demonstrates extenuating circumstances that merit the issuance of the license in order to protect the district's programs or students.

(2) The Emergency School Counselor License shall be issued solely at the discretion of the Executive Director for any length of time deemed necessary to protect the district's programs or students. The Executive Director may consider efforts the educator has made in meeting licensure requirements.

(3) An Emergency School Counselor License generally will not exceed one year unless the educator and/or the district has presented unusual extenuating circumstances.

(4) The Emergency School Counselor License is not subject to the 120 days allowed for licensure renewal purposes under ORS 342.127(4).

Stat. Auth.: ORS 342.125

Stats. Implemented: ORS 342.120-143, 342.153, 342.165 & 342.223-342

Hist.: TSPC 8-2004(Temp), f. & cert. ef. 9-10-04 thru 3-9-05; Suspended by TSPC 9-2004(Temp), f. & cert. ef. 9-5-04 thru 3-9-05; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05

584-070-0410

Emergency School Psychologist License

(1) An Emergency School Psychologist License may be issued when a school district demonstrates extenuating circumstances that merit the issuance of the license in order to protect the district's programs or students.

(2) The Emergency School Psychologist License shall be issued solely at the discretion of the Executive Director for any length of time deemed necessary to protect the district's programs or students. The Executive Director may consider efforts the educator has made in meeting licensure requirements.

(3) An Emergency School Psychologist License generally will not exceed one year unless the educator and/or the district has presented unusual extenuating circumstances.

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(4) The Emergency School Psychologist License is not subject to the 120 day grace period allowed for licensure renewal purposes under ORS 342.127(4).

Stat. Auth.: ORS 342.125
Stats. Implemented: ORS 342.120-143, 342.153, 342.165 & 342.223-342
Hist.: TSPC 8-2004(Temp), f. & cert. ef. 9-10-04 thru 3-9-05; Suspended by TSPC 9-2004(Temp), f. & cert. ef. 9-5-04 thru 3-9-05; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05

584-080-0171

Emergency Administrator License

(1) An Emergency Administrator License may be issued when a school district demonstrates extenuating circumstances that merit the issuance of the license in order to protect the district's programs or students.

(2) The Emergency Administrator License shall be issued solely at the discretion of the Executive Director for any length of time deemed necessary to protect the district's programs or students. The Executive Director may consider efforts the educator has made in meeting licensure requirements.

(3) An Emergency Administrator License generally will not exceed one year unless the educator and/or the district has presented unusual extenuating circumstances.

(4) The Emergency Administrator License is not subject to the 120 days allowed for licensure renewal purposes under ORS 342.127(4).

Stat. Auth.: ORS 342.125
Stats. Implemented: ORS 342.120-143, 342.153, 342.165 & 342.223-342
Hist.: TSPC 8-2004(Temp), f. & cert. ef. 9-10-04 thru 3-9-05; Suspended by TSPC 9-2004(Temp), f. & cert. ef. 9-5-04 thru 3-9-05; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05

584-100-0071

Highly Qualified Middle-Level or Secondary Special Education Teacher

To be considered highly qualified a middle-level or secondary special education teacher must:

(1) Meet the requirements for the "Highly Qualified Middle-Level or Secondary Teacher" new or not new to the profession; and

(2) Hold the appropriate Oregon special education endorsement.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05

Travel Information Council Chapter 733

Adm. Order No.: TIC 2-2004

Filed with Sec. of State: 11-12-2004

Certified to be Effective: 11-12-04

Notice Publication Date: 9-1-04

Rules Amended: 733-030-0021, 733-030-0065

Subject: The Travel Information Council held a quarterly meeting on July 16, 2004. The Council proposed rule changes to allow food facilities that have two distinct brand name restaurants in one building to display the logos of both food services on one food logo plaque. Permit fees will be 1 1/3 the rate for a regular food logo in that area. Having received no public comment, the council voted to adopt the changes at the November 5, 2004 meeting.

Rules Coordinator: Angela Willhite—(503) 375-4508

733-030-0021

Criteria for Specific Information Permitted

(1) Each qualified motorist business identified on a sign panel shall have given written assurance to the Council of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, age, sex, or national origin, meet all applicable Federal and State ADA guidelines, and shall not be in breach of that assurance. Each qualified business will offer services to all citizens.

(2)(a) If the qualified motorist business is a gas, food, lodging, or Tourist Attraction facility, it must be located within one mile of the interchange or intersection measured by vehicle distance from the center point of the terminus of the exit ramp on an interchange and from the center of an intersection to the nearest point of the intersection of the driveway of the business and a public highway. However, any qualified motorist business set out in this section location within nine miles of an interchange or intersection, but more than one mile from the interchange or intersection may apply to the Council for a waiver under the provisions of rule 733-030-0060.

(b) Facilities requesting signing from an Interstate or Expressway interchange and located within a city with a population of 15,000 or more and where there are sufficient numbers of services within one mile of that interchange or intersection, are not eligible for a mileage waiver and shall be located within one mile of the interchange or intersection. If there is not a sufficient amount of services available at any given interchange or intersection in a city with a population of 15,000 or more, then any qualified motorist business set out in this section located within two miles of an interchange or intersection may apply to the Council for a waiver under the provisions of rule 733-030-0060. A maximum of two supplemental signs per facility shall be allowed within urban areas. A facility has the right to appeal the conditions set forth in this paragraph through a waiver to the Council. A seven-year review will be conducted for those logo signs installed following the rule adoption.

(3) If the qualified motorist business is a camping facility, it must be located within three miles of the interchange measured by vehicle distance from the center point of the terminus of the exit ramp of an interchange or the center of an intersection at an intersection to the nearest point of the intersection of the driveway of the business and a public highway. However, any qualified motorist business set out in this paragraph located within 15 miles of an interchange or intersection, but more than three miles from an interchange or intersection, may apply to the Council for a waiver under the provisions of rule 733-030-0060.

(4) The types of service permitted shall be limited to "GAS", "FOOD", "LODGING" "CAMPING" or "TOURIST ATTRACTION". To qualify for displaying a logo on a sign panel all services must display permanent on premise signing which is visible from the roadway and sufficient to direct motorists to the appropriate entrance from the roadway. The on premise signing shall display the Assumed Business Name as stated on logo plaques. Facilities that operate under and/or provide service using more than one brand name shall be limited to displaying not more than two brand names per plaque.

(a) "GAS" shall include:

(A) Vehicle services, which shall include fuel, oil, tire repair and water;

(B) Restroom facilities and drinking water;

(C) Continuous operation at least 16 hours per day, 7 days a week for businesses located on the interstate system and expressways and continuous operation at least 12 hours per day, 7 days a week on the primary and secondary system; and

(D) Telephone service;

(E) FOOD services located within GAS facilities, that meet all requirements under 733-030-0021(4)(b) except for (E), may display their logo on the logo plaque for the GAS facility in which they are located. Each GAS plaque shall be limited to the addition of only one FOOD service. Brand names that are reflected as part of the GAS facility's registered business name may be included on the logo plaque.

(b) "FOOD" shall include:

(A) Appropriate business & health department licensing for the providing of meals; facilities are required to maintain a valid health permit or license for the type of facility operated.

(B) Continuous operation for 10 hours a day or breakfast/lunch/dinner, not open later than 10:00 am, 7 days a week, with year-round service

(C) Telephone service;

(D) The primary business operation is the providing of meals; and

(E) Seating for at least 20 people. FOOD facilities that have two distinct brand name restaurants in one building may display the logos of both FOOD services on one FOOD logo plaque. FOOD facilities located within GAS facilities, which do not meet FOOD seating requirements, may be displayed on the GAS logo for that facility. See 733-030-0021(4)(a)(E);

(c) "LODGING" shall include:

(A) Licensing where required;

(B) Adequate sleeping accommodations;

(C) Telephone services.

(D) Bed & Breakfast facilities, provided they maintain valid food and lodging health department licenses

(d) "CAMPING" shall include:

(A) Licensing where required;

(B) Adequate parking accommodations;

(C) Modern sanitary facilities and drinking water.

(e) "TOURIST ATTRACTION" shall include:

(A) Adequate parking;

(B) Restrooms provided;

(C) Drinking water required;

(D) Facility be reasonably close to a public telephone;

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(E) Open at least six hours a day; six days a week of continuous operation during its normal business season.

(F) Licensing where required;

(G) Attendant/Docent/Guide on duty during all operating hours.

(H) Attractions involving manufacturing or production, such as industrial facilities or wineries must meet all conditions under (e)(A)–(G) and must provide the opportunity for visitors to observe the production or manufacturing process or facilities.

(I) Historical facilities and visitor centers must meet all conditions under (e)(A)–(G) and must provide:

(i) Documentation showing that the facility meets the definition of the authorizing state agency that develops criteria for these facilities

(ii) Historical tour routes may qualify with a waiver given by the Council if such a tour route is sufficiently signed to guide the motorist safely and conveniently through the tour.

(iii) Historical sites must show registration through State or Federal designators;

(5) Historical museum offerings must:

(a) Exist on a permanent basis for essentially aesthetic or educational purposes;

(b) Offerings must be the primary source of business of the requesting facility;

(c) Museum offerings must be exhibited to the public on a regular basis through buildings owned and operated by the museum.

(6) The number of sign panels permitted shall be limited to one for each type of service along an approach to an interchange or intersection. The number of logos permitted on a sign panel is specified in rule 733-030-0036 for the interstate system, rule 733-030-0041 for expressways, and rule 733-030-0045 for the primary and secondary system.

(7) A qualified motorist business, which fails to meet the requirements of section (4) of this rule, may request a waiver from the Council under the provision of 733-030-0060.

Stat. Auth.: ORS 377.700 - 377.840

Stats. Implemented: ORS 183.310 - 183.550

Hist.: TIC 1-1979(Temp), f. & ef. 7-26-79; TIC 2-1979, f. & ef. 9-28-79; TIC 1-1980, f. & ef. 5-5-80; TIC 1-1984, f. & ef. 1-13-84; TIC 3-1985, f. & ef. 6-4-85; TIC 1-1994, f. & cert. ef. 6-1-94; TIC 3-1995, f. & cert. ef. 11-8-95; TIC 2-1996, f. & cert. ef. 7-12-96; TIC 1-1997, f. & cert. ef. 2-13-97; TIC 1-2000, f. 4-14-00, cert. ef. 5-1-00; TIC 2-2000, f. 10-13-00, cert. ef. 11-1-00; TIC 1-2004(Temp), f. & cert. ef. 7-20-04 thru 1-15-05; TIC 2-2004, f. & cert. ef. 11-12-04

733-030-0065

Fees and Installation

(1) The Council may request the Department to furnish, erect and maintain sign panels, supplemental sign panels and trailblazers at locations specified by the Council.

(2) Upon the approval of an application for a logo or logos to be affixed to a sign panel, the Council shall request and authorize installation of sign panels from ODOT, the TIC sign crew or a TIC contractor as determined appropriate by TIC staff. The Council shall provide the installer with all necessary information to erect the sign panels, supplemental sign panels, trailblazers or install the logo.

(3) The Council shall notify applicant promptly when a permit application has been approved to allow the applicant sufficient time to furnish the necessary number of logos. If the Council is notified that a qualified motorist service business has failed to furnish its logos by the specified date given by the Council, or that the logo signs furnished are not in compliance with specifications provided by the Council it may cancel the permit and refund the amount paid in advance by the applicant.

(4) Fees. The annual permit fee for each logo placed on a sign panel shall be based on the traffic volume and population density of the area where the highway is located. Fees set by the Council shall be reviewed biennially and made apart of this administrative rule. The new fee schedule as of November 1, 1997 is:

(a) Schedule A I-5, Portland; I-205, Portland; Highway 217, Tigard, Beaverton; 26 Portland, Beaverton (before North Plains):

(A) Primary Sign Fee \$400 per sign;

(B) Secondary Sign Fee \$160 per sign.

(b) Schedule B I-5, Eugene through Salem; Highway 213, Oregon City:

(A) Primary Sign Fee \$310 per sign;

(B) Secondary Sign Fee \$150 per sign.

(c) Schedule C I-5 Ashland through Creswell: All of I-84:

(A) Primary Sign Fee \$260 per sign;

(B) Secondary Sign Fee \$125 per sign.

(d) Schedule D all primary and secondary routes west of the Cascade Mountains, I-82, Southern Oregon, Oregon Coast and Klamath Falls and Bend/Sisters area:

(A) Primary Sign Fee \$220 per sign;

(B) Secondary Sign Fee \$100 per sign.

(e) Schedule E Central Oregon:

(A) Primary Sign Fee \$120 per sign;

(B) Secondary Sign Fee \$70 per sign.

(f) Schedule F Northeastern and Southeastern Oregon:

(A) Primary sign fee \$75 per sign;

(B) Secondary sign fee \$50 per sign.

(5) The annual permit fee for a trailblazer shall be \$50.

(6) In accordance with OAR 733-030-0055(10), permit fees are payable with the contract and the permit shall be automatically renewed upon receipt of the entirety of the appropriate annual fee on or before the payment due date stated in the Council's invoice.

(7) Permit fees for FOOD facilities that display the logos of two distinct brand FOOD services on one FOOD logo plaque shall be 1 1/3 fee for a regular FOOD logo charged in that area. Permit fees for GAS facilities that include a FOOD facility on their logo plaque, shall be 1 1/3 the fee for a regular GAS logo charged in that area. Payment of fees is the responsibility of the GAS facility, which will be designated as the primary facility.

(8) Permit fees for Dual Services signing shall be 1 1/3 the fee for one service logo charged in that area.

(9) The Council may charge a fee when a facility desires to replace their logo plaques due to a redesign of the logo design, color or a change in the registered business name of \$75 per plaque per location.

(10) Nonpayment of annual fees will result in the removal of signs, and the sign location will be offered to the next qualified motorist service business desiring that sign location. Should the signs be reinstalled after removal due to nonpayment of fees, the Council shall charge a maintenance fee of \$200 per sign reinstalled, along with annual fees due.

(11) In case of removal of a sign panel or supplemental sign panel, the permit fee for any months or major portion (16 days or more) of a month remaining to the anniversary of the date of placement of the logo shall be refunded. There shall be no refund of annual permit fees due to temporary or seasonal closure

(12) Annual fees for qualifying TOURIST ATTRACTION facilities shall be the same fees charged for other logo signs under this section, (4)(a)–(f). If the qualifying facility can show nonprofit designation, annual fees will be charged at \$150 per advance sign, and \$50 per supplemental ramp sign.

Stat. Auth.: ORS 377.700 -377.840

Stats. Implemented: ORS 183.310 -183.550

Hist.: TIC 1-1979(Temp), f. & ef. 7-26-79; TIC 2-1979, f. & ef. 9-28-79; TIC 1-1980, f. & ef. 5-5-80; TIC 3-1984 (Temp), f. & ef. 10-29-84; TIC 2-1985, f. & ef. 6-4-85; TIC 1-1986, f. & ef. 5-28-86; TIC 2-1986, f. & ef. 9-19-86; TIC 1-1996, f. & cert. ef. 1-8-96; TIC 2-1996, f. & cert. ef. 7-12-96; TIC 3-1996, f. & cert. ef. 10-16-96; TIC 1-1997, f. & cert. ef. 2-13-97; TIC 1-1998, f. 6-8-98, cert. ef. 7-1-98; TIC 2-1998, f. & cert. ef. 11-13-98; TIC 1-2000, f. 4-14-00, cert. ef. 5-1-00; TIC 3-2000, f. 12-14-00, cert. ef. 12-15-00; TIC 1-2001, f. 5-11-01, cert. ef. 5-15-01; TIC 2-2002, f. & cert. ef. 10-30-02; TIC 1-2004(Temp), f. & cert. ef. 7-20-04 thru 1-15-05; TIC 2-2004, f. & cert. ef. 11-12-04

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Adm. Order No.: TIC 3-2004

Filed with Sec. of State: 11-15-2004

Certified to be Effective: 11-15-04

Notice Publication Date: 8-1-04

Rules Amended: 733-030-0036, 733-030-0041, 733-030-0045, 733-030-0095, 733-030-0110, 733-030-0270, 733-030-0300

Subject: 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—(503) 378-4508

733-030-0036

Special Requirements — Interstate Highways

(1) Location:

(a) Except as provided in rule 733-030-0016 and in paragraph (2)(b) and (c) of this rule a separate sign panel shall be provided for each type of service for which logos are displayed.

(b) The proposed location must be reviewed and approved by the engineer.

(c) Sign panels shall not be erected at an interchange where the motorist cannot conveniently re-enter the highway and continue in the same direction of travel or at interchanges between an interstate highway and a

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fully access controlled freeway or an interchange between interstate highways.

(d) At single-exit interchanges where service facilities are not visible from a ramp terminal, supplemental sign panels shall be installed along the ramp or at the ramp terminal, and may be provided along the crossroad. These supplemental sign panels shall be duplicates of the corresponding sign panels along the main traveled way but reduced in size. GAS supplemental sign panels for facilities that also display a FOOD service on their logo plaque, shall only display their GAS logo on their supplemental sign panels. The supplemental sign panels shall include the distances to the business and directional arrows in lieu of words. The minimum letter height should be four inches except that any legend on a symbol shall be proportionate to the size of the symbol. Supplemental sign panels may be used on ramps and crossroads at double exit interchanges. There shall be no more than 18 plaques total being displayed along any one-exit ramp. Of those 18, a maximum of ten can be for one type of service. A maximum of six plaques per type of facility shall be displayed per direction being signed. Maximum board size shall be eight spaces. On channelized off-ramps, supplemental logo signs should be placed in advance of the channelized markings. Separate signs, for the same type of service, may be installed on opposite sides of the ramp to direct motorists into the proper lane for those facilities displayed on the board. [Exhibit not included. See ED. NOTE.]

(2) Composition:

(a) Single exit interchanges. The name of the type of service followed by the exit number shall be displayed in one line above the business signs. This does not apply to sign panels already erected at the time these rules are adopted. At unnumbered interchanges the directional legend NEXT RIGHT (LEFT) shall be substituted for the exit number. "GAS," "FOOD," "LODGING," "CAMPING," and "TOURIST ATTRACTION" sign panels shall be limited to six logos each.

(b) Double exit interchanges. Sign panels shall consist of two sections, one for each exit. The top section shall display the logo for the first exit and the lower section shall display the logo for the second exit. The name of the type of service followed by the exit number shall be displayed in a line above the logos in each section. The exit number requirements of this section do not apply to sign panels erected at the time these rules are adopted. At unnumbered interchanges, the legends NEXT RIGHT (LEFT) shall be substituted for the exit numbers. Where a type of motorist service is to be signed for at only one exit, one section of the sign panel may be omitted or a single exit interchange sign panel may be used. The number of logos on the sign panel (total of both sections) shall be limited to six for "GAS," "FOOD," "LODGING," and "CAMPING" and "TOURIST ATTRACTION."

(c) Remote rural interchanges. In remote rural areas, where not more than two qualified motorist businesses are available for each of two or more types of services, logos for two types of service shall be displayed in combination on a sign panel. The name of each type of service shall be displayed in combination on a sign panel. The name of each type of service shall be displayed above its respective logo, and the exit number shall be displayed above the name of the type of services. The exit number requirements of this paragraph do not apply to sign panels erected at the time these rules are adopted. At unnumbered interchanges, the legend NEXT RIGHT (LEFT) shall be substituted for the exit number.

(3) Size:

(a) Logos:

(A) Each logo displayed on the "GAS" sign panel shall be contained within a 48-inch wide and 36-inch high rectangular background area, including border.

(B) Each logo on the "FOOD," "LODGING," "CAMPING," and "TOURIST ATTRACTION" sign panel shall be contained within a 60-inch wide and 36-inch high rectangular background area, including border.

(b) Legends. All letters used in the name of type of service and the directional legend shall be 10-inch capital letters. Numbers shall be 10 inches in height.

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

Stat. Auth.: ORS 377.700 - 377.840

Stats. Implemented: ORS 183.310 - 183.550

Hist.: TIC 1-1979(Temp), f. & ef. 7-26-79; TIC 2-1979, f. & ef. 9-28-79; TIC 1-1980, f. & ef. 5-5-80; TIC 1-1991, f. & cert. ef. 12-23-91; TIC 1-1997, f. & cert. ef. 2-13-97; TIC 1-2000, f. 4-14-00, cert. ef. 5-1-00; TIC 3-2004, f. & cert. ef. 11-15-04

733-030-0041

Special Requirements — Expressways

(1) Location:

(a) Interchanges. The location of sign panels and supplemental sign panels erected for interchanges shall be in accordance with the provision of rule 733-030-0036(1)(a)-(d).

(b) Intersections. Logos shall not be displayed for any business if its building or on-premise signing is visible and/or recognizable on the traveled way for a distance of 300 feet or more from the intersection. Increased distances may be allowed for businesses providing camping or repair services to Recreational Vehicles (RV) where issues of safety and RV maneuvering are concerned. Visibility and recognition are determined by being able to recognize the facility by observing the building or existing signing adjacent to or attached to the facility, as to the type of service (Gas, Food, Lodging, Camping) for which it has applied. A facility that is visible within 300 feet or more, but is not recognizable, may qualify for signing if a favorable determination is made by the Travel Information Council. However, in rural towns with a population of 500 persons or less, where there are minimal services meeting eligibility criteria, and where the nearest available services are at least 25 miles from that town, the Council, upon consultation with the Engineer, may consider installing logo signs in cases where the business is visible on the traveled way the last 300 feet from the intersection. Supplemental sign panels similar to those as described in OAR 733-030-0036(1)(d) may be provided on the crossroad.

(c) Resort symbol signing. Signing is available to a facility in a rural area where the highway is either in a scenic area or passes through public land where facilities are permitted of a government agency. The facilities must be open full time and offer three of the following services:

(A) Restaurant or coffee shop;

(B) Lodging;

(C) Gasoline and automotive services. The resort area shall also be at least 25 miles from any other commercially owned business offering services of a like nature. The public entity requesting approved signs is fully responsible for the actual financial costs of manufacture, installation, and potential repairs. The organization or public agency responsible for the public land shall be responsible for signing the facilities off of the State highway right of way, including follow-up signing. If the facility (such as gasoline and automotive services) is the last of its kind for a substantial area, the signing must indicate the mileage to the next available facility. Council will address each request on a case by case basis.

(2) Composition:

(a) Interchanges. The composition of sign panels and supplemental panels erected for interchanges shall be in accordance with rule 733-030-0036(2)(a)-(c).

(b) Intersection. A maximum of six logos for each type of service shall be displayed along each approach to the intersection. A maximum of three or two and four logos for each of two different types of services may be combined on the same sign panel. The name of each type of service shall be displayed above its logo together with an appropriate legend such as NEXT RIGHT (LEFT) or a directional arrow.

(3) Size:

(a) Interchanges. Logos shall conform with the size specifications in rule 733-030-0036(3)(a) and (b).

(b) Intersections. See rule 733-030-0055.

Stat. Auth.: ORS 377.700 - 377.840

Stats. Implemented: ORS 183.310 - 183.550

Hist.: TIC 1-1979(Temp), f. & ef. 7-26-79; TIC 2-1979, f. & ef. 9-28-79; TIC 1-1980, f. & ef. 5-5-80; TIC 1-1990, f. & cert. ef. 3-26-90; TIC 1-1994, f. & cert. ef. 6-1-94; TIC 1-2000, f. 4-14-00, cert. ef. 5-1-00; TIC 3-2004, f. & cert. ef. 11-15-04

733-030-0045

Special Requirements — Primary and Secondary System

(1) Location. The proposed location must be reviewed and approved by the engineer.

(2) Composition. A maximum of four logos for each type of service shall be displayed along each approach to the intersection. A maximum of two logos for each of two different types of services may be combined on the same sign panel. The name of each type of service shall be displayed above its logo together with an appropriate legend such as NEXT RIGHT (LEFT) or a directional arrow.

(3) Size:

(a) Each logo shall be contained within a 24-inch-wide and 18-inch-high rectangular background area, including border;

(b) Legends: All letters used in the name of the type of service on the sign panel shall be four-inch capital letters.

(4) Combination services signing (i.e., legend reading "FOOD/LODGING," displaying one facility's logo plaque) will be allowed in rural locations only. The customer applying for signing is the only facility available in the geographical area. Approval for Dual Services Signing will be under an agreement between TIC and the customer/facility. If another qualified facility is built in the area, the facility with the dual services signing will be required to display their plaques on two logo boards, one for

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each service. Facilities approved for Dual Services Signing will be required to pay 1-1/3 the annual fee for a facility in their area.

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 1-1979(Temp), f. & ef. 7-26-79; TIC 2-1979, f. & ef. 9-28-79; TIC 1-1980, f. & ef. 5-5-80; TIC 2-1996, f. & cert. ef. 7-12-96; TIC 1-1997, f. & cert. ef. 2-13-97; TIC 2-1998, f. & cert. ef. 11-13-98; TIC 3-2004, f. & cert. ef. 11-15-04

733-030-0095

Locations

(1) Tourist oriented directional signs are intended for use primarily in rural areas. Any installation of tourist oriented directional signs outside rural areas shall be consistent with the state signing policy criteria contained in rule 733-030-0120.

(2) Tourist oriented directional signs should be located so as to take advantage of natural terrain, to have the least impact on the scenic environment, and to avoid visual conflict with other traffic control devices within the highway right-of-way.

(3) Tourist oriented directional signs shall not be installed until a thorough investigation by the engineer determines that no conflict resulting in unsafe driving conditions will exist with other official traffic control devices.

(4) Tourist oriented directional signs shall not be used at interchanges on expressways or freeways.

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 2-1983(Temp), f. & ef. 6-30-83; TIC 4-1983, f. & ef. 8-26-83; TIC 1-1994, f. & cert. 6-1-94; TIC 2-1995, f. & cert. ef. 5-17-95; TIC 2-1996, f. & cert. ef. 7-12-96; TIC 1-2001, f. 5-11-01, cert. ef. 5-15-01; TIC 3-2004, f. & cert. ef. 11-15-04

733-030-0110

Special Requirements — Primary and Secondary Systems

(1) Location. Intersection signs are optional at all locations only but cannot be used unless the qualifying business also has an advance sign.

(2) Sign panels shall not be displayed for any business if it's building or on-premise signing is visible and/or recognizable on the traveled way for a distance of 300 feet or more from the intersection. Visibility and identification are determined by being able to recognize the facility, by observing the building itself or existing signing adjacent to or attached to the facility, as the type of tourist oriented business for which signing has been requested. A facility that is visible within 300 feet or more, but is not recognizable, may qualify for signing if such a favorable determination is made by the Travel Information Council. Intersection and advance tourist oriented directional signs shall be as described in rule 733-030-0105(2). The option of using intersection tourist oriented directional sign panels at all locations shall be determined on the basis of an engineering study.

(3) Composition. A maximum of four tourist oriented directional business signs may be displayed at each location. A maximum of three locations may be utilized at any intersection and a maximum of three locations may be utilized in advance of an intersection.

(4) Size:

(a) Intersections. Signs located at intersections shall conform to size specifications in rule 733-030-0105(1); and

(b) Advance locations. Signs located in advance of the intersection shall conform to size specifications in rule 733-030-0105(1).

(5) Any intersection tourist oriented directional sign erected or pending as the primary sign before September 19, 1988, may be maintained.

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 2-1983(Temp), f. & ef. 6-30-83; TIC 4-1983, f. & ef. 8-26-83; TIC 2-1988, f. & cert. ef. 11-1-88; TIC 1-1994, f. & cert. ef. 6-1-94; TIC 2-1996, f. & cert. ef. 7-12-96; TIC 3-2004, f. & cert. ef. 11-15-04

733-030-0270

Location

(1) Museum or Historic Site signs are intended for use primarily in rural areas. They can be installed in urban areas if a suitable location is available and approved by the Oregon Department of Transportation (ODOT). Any installation of Museum or Historic Site signs outside rural areas shall be consistent with the state signing policy criteria contained in rule 733-030-0320.

(2) Museum or Historic Site signs should be located so as to take advantage of natural terrain, to have the least impact on the scenic environment, and to avoid visual conflict with other traffic control devices within the highway right-of-way.

(3) Museum or Historic Site signs shall not be installed until a thorough investigation by the engineer determines that no conflict resulting in unsafe driving conditions will exist with other official traffic control devices.

(4) Museum or Historic Site signs shall not be used at interchanges on expressways or freeways.

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 2-1997, f. & cert. ef. 11-3-97; TIC 3-2004, f. & cert. ef. 11-15-04

733-030-0300

Special Requirements — Primary and Secondary System

(1)(a) Location. Intersection signs cannot be used unless the qualifying Museum or Historic Site also has an advance sign.

(b) Sign panels shall not be displayed for any feature if its building or on-premise signing is visible and/or recognizable on the traveled way for a distance of 300 feet or more from the intersection. Visibility and identification are determined by being able to recognize the facility, by observing the building itself or existing signing adjacent to or attached to the facility. A facility that is visible within 300 feet or more, but is not recognizable, may qualify for signing if such a favorable determination is made by the engineer. Intersection and advance Museum or Historic Site signs shall be as described in rule 733-030-0290(2). The option of using intersection Museum or Historic Site sign panels at all locations shall be determined on the basis of an engineering review.

(2) Composition. A maximum of three Museum or Historic Site signs may be displayed at each location. A maximum of three locations may be utilized at any intersection and a maximum of three locations may be utilized in advance of an intersection.

(3) Size:

(a) Intersection signs located at intersections shall conform to size specifications in rule 733-030-0290(1); and

(b) Advance signs located in advance of the intersection shall conform to size specifications in rule 733-030-0290(1).

(4) Any intersection Museum or Historic Site sign erected or pending as the primary sign before September 19, 1988, may be maintained.

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 2-1997, f. & cert. ef. 11-3-97; TIC 3-2004, f. & cert. ef. 11-15-04

Water Resources Department Chapter 690

Adm. Order No.: WRD 7-2004

Filed with Sec. of State: 11-5-2004

Certified to be Effective: 11-5-04

Notice Publication Date: 8-1-04

Rules Adopted: 690-018-0025

Rules Amended: 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, 690-018-0090

Subject: The Water Resources Commission amended rules relating to water right cancellation (OAR Chapter 690, Division 17) and the allocation of conserved water (OAR Chapter 690, Division 18).

The changes to the water right cancellation rules modify the cancellation request and affidavit requirements in order to enhance the notification of interested parties of proposed water right cancellation actions. The rules also establish timelines for the Department to initiate a water right cancellation proceeding under the provisions of ORS 540.631.

The changes to the allocation of conserved water rule 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 that the applicant pays the newspaper notice publication costs; establish a requirement for district's seeking allocations of conserved water to adopt a policy articulating how they will approach such allocations; and make minor housekeeping changes to improve the readability of the rules.

New statutory provisions 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; allow for consideration of conservation projects implemented up to 5 years prior to application submittal; and provide for applications to be submitted for a "water use subject to transfer."

Rules Coordinator: Adam Sussman—(503) 986-0877

ADMINISTRATIVE RULES

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90; WRD 7-2004, f. & cert. ef. 11-5-04

690-017-0010

Definitions

(1) "Affidavit" means a declaration upon oath, in writing, signed by the party and sworn to before a notary public.

(2) "Affiant" means the individual completing, swearing to and signing an affidavit.

(3) "Bankruptcy" means proceedings under federal bankruptcy statutes to relieve a debtor (the bankrupt) from insurmountable debt. The commencement of a bankruptcy action occurs with the date a petition for relief is filed by a debtor or creditor to the bankruptcy court.

(4) "Cancellation" means the action taken by the Director, the Commission, or the courts to abolish all or part of a permit or certificate of water right.

(5) "Deed-in-Lieu" means a deed tendered by the record owner to prevent the creditor from asserting a legal right to recover payment of a debt through a foreclosure action.

(6) "District" has the meaning of the term as defined in ORS 540.505

(7) "Foreclosure" means a proceeding in or out of court to extinguish all right, title and interest of the record owner(s) of property in order to sell or repossess the property to satisfy a lien against it. A foreclosure action begins on the date presentation of the official demand for payment is made to the debtor by the creditor by certified mail.

(8) "Forfeiture" means the loss of a water right caused by the failure of the appropriator or record owner of the right to use the water for five successive years.

(9) "Judicial Action" means a suit, injunction, or litigation filed with or allowed by the courts.

(10) "Natural Disaster" means an act of God, such as flooding or erosion, which occurred with such magnitude that it either prohibited or severely limited the ability to use the water.

(11) "Perfected Water Right" means a water right which has been confirmed by the issuance of a certificate of water right or by a court decree.

(12) "Presumption of Forfeiture" means a conclusion established by statute that a water right, in whole or in part, is forfeited by nonuse of the right for five successive years.

(13) "Principal Farm Operator" means the record owner, including a lessee to whom the right of possession of agricultural property has been granted by the lessor for a specified period of time in return for a consideration.

(14) "Rebuttable Presumption" means a presumption which, by statute, may be overcome by evidence sufficient to explain or disprove the presumption.

(15) "Record Owner" means the person shown as the owner of the land in the county deed records established under ORS Chapter 93.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610-540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90; WRD 7-2004, f. & cert. ef. 11-5-04

690-017-0100

Cancellation Authorized by Record Owner

(1) Perfected water rights shall be cancelled by order of the Director in accordance with the provisions of ORS 540.621 when so requested by notarized affidavit of the record owner of the land to which the water right in question is appurtenant.

(2) The affidavit shall contain, at a minimum, the following:

(a) A statement that the affiant is the record owner of the lands associated with the water right in question;

(b) The certificate number of the water right;

(c) A statement that the affiant has abandoned any and all interest in and to all or a specified portion of the water right;

(d) Where only part of the right has been abandoned, a description of the specific place of use by quarter-quarter section and acres on which the right has been abandoned, with information sufficient to determine the lands on which the right is not to be cancelled; and

(e) A request that all or part of the certificate be cancelled.

(f) A statement of whether, to the best of the affiant's knowledge, the subject water right is within the boundaries of a district or federal reclamation project.

(3) Based on the best information available to the Department, if the subject water right is within the boundaries of a district or federal reclamation project, the Department shall, as applicable, provide the district and the United States Bureau of Reclamation notice of the water right cancellation request.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610-540.670

690-017-0400

Cancellation Initiated by Department

(1) The Department shall initiate proceedings to cancel a perfected water right, as provided in ORS 540.631 and these rules, whenever it appears that a right has been forfeited as provided in 540.610. The decision to initiate cancellation proceedings shall be based on evidence submitted to the Department, by any person, that alleges five or more years of nonuse so as to create a presumption of forfeiture, and from which evidence it further appears the presumption of forfeiture would not likely be rebutted under OAR 690-017-0800(2)(a), (d) or (e).

(2) Where the evidence submitted to the Department is in the form of affidavits, notarized affidavits from two individuals shall be required. An affidavit shall contain the following:

(a) Name, address and telephone number of affiant;

(b) Page number of the certificate in question as recorded in the State Record of Water Right Certificates, name of the person to whom the certificate was issued, and priority date of the certificate;

(c) Township, range, quarter-quarter section and number of acres to which the certificate in question is appurtenant;

(d) The use for which the water right was issued;

(e) The source of water to be used as provided in the certificate;

(f) A statement of the affiant's knowledge of the lands described in the certificate in question, and an explanation of how the affiant gained this knowledge;

(g) A statement that the affiant knows with certainty that no water from the allowed source has been used for the authorized use on the lands, or a portion of the lands, the portion being accurately described, under the provisions of the water right within a period of five or more successive years, and the beginning and ending years of the period of nonuse. Where possible, beginning and ending months should also be given;

(h) A statement that the affiant believes the allegation of nonuse will not be rebutted under any of the grounds for rebuttal set out in ORS 540.610;

(i) A copy of the county tax plat map illustrating the lands to which the subject water right is appurtenant, and if applicable, the location of the portion of the water right asserted to have been forfeited;

(j) The affiant's agreement to testify in a hearing before the Water Resources Department if necessary;

(k) To the best of the affiant's knowledge, a statement of whether the subject water right is within the boundaries of a district or federal reclamation project; and

(l) Proof that the affidavit(s) have been served upon the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands.

(3) Based on the best information available to the Department, if the subject water right is within the boundaries of a district or federal reclamation project, the Department shall provide notice of receipt of affidavits submitted under this rule, as applicable, to the district and the United States Bureau of Reclamation at least 90 days prior to initiating a cancellation proceeding.

(4) Where the evidence submitted is solely from Department personnel, such evidence shall be submitted in the form of an affidavit and contain all information described in section (2) of this rule. In addition, the affidavit shall be supported by stream or canal gaging records, water or electric meter readings, static level measurements, system capacity calculations, a summary of field investigations, photos, maps, or other relevant data covering each year of the period of alleged nonuse.

(5) The Department shall initiate proceedings to cancel a water right under ORS 540.631 within 180 days of receiving the evidence required under sections (1) and (2) of this rule.

(6) The Department shall notify the record owner of the land to which a perfected water right is appurtenant that it intends to cancel all or a portion of the water right. The occupant of affected lands, if other than the owner, shall also be notified. If the subject water right is within the boundaries of a district or federal reclamation project, the Department shall, as applicable, mail a copy of the cancellation notice to the district and the United States Bureau of Reclamation. Notice shall be sent to the record owner of the land or occupant by certified mail, return receipt requested. The notice to the record owner shall be addressed to the owner at the owner's last address or record in the office of the county assessor of the county in which the lands are located. The notice shall contain the following:

(a) A description of the water right and the land to which the water right is appurtenant;

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(b) A statement that the information before the Director creates a rebuttal presumption of forfeiture;

(c) A statement that the record owner or the occupant has a period of 60 days from the date of the mailing of the notice within which to protest the proposed cancellation either by asserting that the water right has been used, or by making rebuttal in the manner and on the grounds provided in OAR 690-017-0600 and 690-017-0800;

(d) Notice that if the record owner intends to rebut the presumption of forfeiture, the protest shall include a statement of the grounds for rebuttal relied upon, and shall be accompanied by appropriate supporting documentation; and

(e) A statement that, following receipt of a protest against the proposed cancellation and determination that the presumption of forfeiture has not been rebutted, a contested case hearing will be scheduled.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610-540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90; WRD 7-2004, f. & cert. ef. 11-5-04

690-018-0010

Purpose and Applicability

(1) These rules describe the voluntary program under which a water right holder may benefit from an allocation of conserved water. Under the program, a portion of any water conserved may be used on additional lands, be put to a different use, or be leased or sold to another user.

(2) This program is intended to promote the conservation of water, maximize beneficial use and enhance streamflows pursuant to the statutory authority in ORS 537.455 to 537.500 and 540.510(2) and (3).

(3) These rules establish the process for review and evaluation of the merits and impacts of applications for allocation of conserved water. After a sufficient number of applications are submitted, these rules shall be reviewed and revised, as necessary, to further promote the allocation of conserved water and to provide criteria for determining requirements for mitigation and the establishment of instream water rights.

(4) The rules in this Division apply to applications submitted after November 5, 2004.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455-537.500

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

690-018-0012

Allocation Formula and Process

(1) Pursuant to ORS 537.470(3), after determining the quantity of conserved water, if any, required to mitigate the effects on other water rights, the Commission shall allocate 25 percent of the remaining conserved water to the state and 75 percent to the applicant, unless the applicant proposes a higher allocation to the state or more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources. If more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources and is not subject to repayment, the Commission shall allocate to the state a percentage equal to the percentage of public funds used to finance the conservation measures and allocate to the applicant a percentage equal to the percentage of other funds used to finance the conservation measures. In no event, however, shall the applicant receive less than 25 percent of the remaining conserved water unless the applicant proposes a higher allocation to the state.

(2) A water right affected by an allocation of conserved water under this program shall retain its original priority date. The priority date of the conserved water rights shall be either the same as or one minute after that of the original right.

(3) Many water users have expressed concern about the effects of an allocation of conserved water on the continued use of water under the original water right. These rules allow for a period of up to five years after implementation of a conservation project to confirm that the project is performing as expected. This will allow water right holders to better determine the adequacy of the quantity of water allocated to the original right. However, no out-of-stream uses may be made of the conserved water until after final completion of the project and issuance of the new certificates.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455-537.500

Hist.: WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

690-018-0014

Timing of applications

(1) Applications for allocation of conserved water should be submitted prior to implementation of conservation measures. Project sponsors are

encouraged to consult with the Department and other natural resource agencies and to submit applications early in the process of project development. The Department will work with applicants to identify and resolve any concerns of local water right holders, governmental entities, or other organizations.

(2) Notwithstanding section (1) of this rule, applications for allocation of conserved water may be submitted for projects in which all or a significant portion of the project costs have already been incurred. However, these project sponsors must consult with other water right holders in the area, governmental entities, and other organizations who have asked to be consulted prior to submittal of an application to identify and resolve any concerns regarding the application. Conserved water shall not be allocated pursuant to an application under these rules if the application is filed more than five years after the conservation measure was implemented.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455-537.500

Hist.: WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

690-018-0020

Definitions

The following definitions apply in OAR 690, division 18 and to any applications submitted or certificates issued under these rules.

(1) "Affected local government" means any local government, as defined in OAR 690-005-0015, within whose jurisdiction water is or would be diverted, conveyed, or used under a proposed or approved order allocating conserved water.

(2) "Commission" means the Water Resources Commission.

(3) "Conservation" means the reduction of the amount of water diverted to satisfy an existing beneficial use achieved either by improving the technology or method for diverting, transporting, applying or recovering the water or by implementing other approved conservation measures.

(4) "Conserved Water" means that amount of water that results from conservation measures, measured as the difference between:

(a) The smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and

(b) The amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate.

(5) "Conserved Water Right" means any water right established by allocation of a quantity of water, that results from the savings of a conservation measure pursuant to OAR 690-018-0010 to 690-018-0090.

(6) "Department" means the Water Resources Department.

(7) "Director" means the Water Resources Director.

(8) "Instream Water Right" means a water right held in trust by the Water Resources Department for the benefit of the people of the State of Oregon to maintain water instream for public use.

(9) "Project costs" means the estimated total projected expenditures and in-kind contributions for a conservation project including but not limited to the costs of engineering, constructing, and monitoring the project and the present value of the incremental change in costs for up to 20 years of operations and maintenance that would not be incurred or realized in the absence of the project.

(10) "Water use subject to transfer" means a water use established by:

(a) An adjudication under ORS Chapter 539 as evidenced by a court decree;

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Water Resources Commission under ORS 537.250; or

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Water Resources Commission.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455-537.500

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

690-018-0025

District Requirements

(1) Any district intending to seek allocations of conserved water pursuant to ORS 537.455 to 537.500 shall, after providing public notice and holding a public meeting, adopt a policy that at a minimum shall:

(a) Describe how water saved by conservation measures will be allocated by the district;

(b) Describe how the district will address the allocation of conserved water percentages under ORS 537.470;

(c) Provide district patrons the opportunity to fund a share of the conservation project that is proportionate to the patron's share of the water

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rights involved in the allocation of conserved water and to receive a corresponding share of the conserved water;

(d) Provide district patrons an opportunity to petition for a vote by all district patrons on the policy pursuant to applicable statutes governing elections or recalls in the subject district; and

(e) Provide district patrons an opportunity to appeal a proposed district conservation project to the district board of directors for failure to follow the district's policy.

(2) The adopted policy under section (1) of this rule shall be reviewed and updated by the board of directors of the district at least once every five years and may be reviewed and updated more frequently at the discretion of the board of directors of the district. Review and update of the adopted policy must comply with the process and provisions under section (1) of this rule.

(3) This rule applies only to applications for allocations of conserved water filed by a district after November 5, 2004. This rule does not apply to applications for allocations of conserved water filed by individuals, including district patrons.

(4) For the purposes of this rule, "district" means an irrigation district organized under ORS Chapter 545 or a water control district organized under ORS Chapter 553.

Stat. Auth.: ORS 536.025, 536.027 & 537.480
Stats. Implemented: ORS 537.455-537.500
Hist.: WRD 7-2004, f. & cert. ef. 11-5-04

690-018-0040

Application Requirements

Applicants for allocation of conserved water shall provide to the Department the information described in this rule in substantially the same order as listed. The information shall include:

(1) The name of the applicant(s), mailing address(es) and telephone number(s);

(2) The certificate, permit, or transfer numbers or the name of the decree, if appropriate, of each water use subject to transfer that will be modified by the proposed allocation of conserved water;

(3) The date of priority and source of water for each water right identified in section (2) of this rule;

(4) The amount of water that may be used under the original rights expressed as the maximum rate and annual volume (duty) of water that may be diverted as stated on the water use subject to transfer.

(5) A description of the diversion facilities in sufficient detail for the Department to determine the capacity of the system. The description shall include:

(a) For a project that has not been completed, a description of the existing diversion facilities, including diversion structures, pumps, conveyance facilities, an estimate of the amount of water that can be diverted at the existing facilities stated as a rate of diversion, and application methods that will be affected by the proposed project; or

(b) For a project that has already been completed, a description of the diversion facilities before the conservation measure was implemented, including diversion structures, pumps, conveyance facilities, the amount of water that was diverted at the facilities stated as a rate of diversion before the conservation measure was implemented, and application methods that will be affected by the project.

(6) A description of the proposed changes to be made in the physical system and operations that will result in the conservation of water.

(7) The amount of water needed to meet the beneficial use currently authorized after implementation of the conservation measures described as a maximum rate and annual volume (duty) of water;

(8) The amount of water conserved by implementing the conservation measure calculated as the amount of water identified in section (4) or section (5) whichever is less, minus the amount of water identified in section (7), expressed as a maximum rate and annual volume (duty) of water;

(9) The proposed percentages and quantities of conserved water to be allocated to the applicants and to the state and the proposed use of any conserved water allocated to the applicant;

(10) The applicant's choice of priority date for the conserved water, being either the same as or one minute after that of the original right.

(11) For a project that has not been completed, the date on which the applicant intends to:

(a) Begin construction of the conservation project;

(b) Complete construction and file notice of project completion pursuant to OAR 690-018-0062(1); and

(c) Request that the allocation be finalized pursuant to OAR 690-018-0062(3).

(12) For a project that has already been completed:

(a) Evidence that the measure was implemented within five years prior to the date of filing the application; and

(b) The date on which the applicant intends to request that the allocation be finalized pursuant to OAR 690-018-0062(3).

(13) A description of any expected effects of the proposed allocation of conserved water on other appropriators that identifies what presently happens to the water that the applicant is proposing to conserve;

(14) A description of any mitigation or other measures planned to avoid harm to other water rights;

(15) A description of the intended use and boundaries of the expected area within which the diversion structures and places of use of the applicants' conserved water right would be located;

(16) To the extent possible, identification of the stream reach for which the conserved water should be managed under an instream water right and any reservations or dedications of the water to instream use;

(17) A map with sufficient detail to locate and describe the facilities and areas affected by the conservation measures;

(18) Identification of any federal or state public sources of project funds and, if federal or state public funds that are not subject to repayment will be used in the project, information showing the estimated project costs and anticipated sources of funds for the project including:

(a) The total cost for project engineering and construction;

(b) The present value of any incremental changes in the costs of operations and maintenance that are directly attributable to the project that would not be incurred or realized in the absence of the project;

(c) The amount of funding and the value of any in-kind contributions for project engineering and construction and for any incremental changes in the costs of operations and maintenance to be provided from federal or state public funds that are not subject to repayment; and

(d) The amount of funding and the value of any in-kind contributions for project engineering and construction and for any incremental change since costs of operations and maintenance to be provided from other funds.

(19) If construction of the project has begun or been completed and if more than 25 percent of the project costs have been expended before applying for allocation of conserved water, evidence that the applicant has attempted to identify and resolve the concerns of water right holders in the area, governmental entities, or other organizations who have asked to be consulted regarding the allocation of conserved water;

(20) A letter showing irrigation district or water control district approval if the conservation project is within the boundaries of the district;

(21) For applications submitted by irrigation districts or water controls districts, evidence of an adopted policy consistent with the requirements of OAR 690-018-0030.

(22) Land use information outlined in the Department's Land Use Planning Procedures Guide; and

(23) Other information the Department or Commission deems necessary and appropriate to aid in the evaluation of the application.

(24) The appropriate fee as required under ORS 536.050.

(25) The Director shall waive the application fee based on the percent of conserved water allocated to the state for instream use, not to exceed 90 percent of the application fee, if the instream allocation is:

(a) To establish an instream water right pursuant to ORS 537.348;

(b) Necessary to complete a project funded by the Oregon Watershed Enhancement Board under ORS 541.375; or

(c) Determined and endorsed in writing by Oregon Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455-537.500

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 3-1990, f. & cert. ef. 2-28-90; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

690-018-0050

Processing a Conservation Application

(1) When the Department receives an application for allocation of conserved water, the Director shall provide public notice of the application through:

(a) Publication in a newspaper having general circulation in the area in which the water rights addressed in the application are located, for a period of at least three weeks and not less than one publication each week; and

(b) Concurrent with the date of first publication pursuant to subsection (a) of this section, mailing to individuals, organizations and agencies including the Indian tribes and local government planning departments on the Department's weekly mailing list, irrigation districts in the area, and any other parties that the Director determines should be notified.

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(2) As provided in ORS 540.520(5), the cost of the publication in a newspaper shall be paid by the applicant. At the discretion of the Director, the applicant may satisfy this requirement by arranging for the publication of the notice prepared by the Department in a newspaper that meets the criteria in subsection (1)(a) and providing the Department with an affidavit of publication or paying the costs of the publication in advance to the Department.

(3) Any person may review and comment on the application for allocation of conserved water by the deadline specified in the notice. The deadline specified in the notice shall provide at least 20 days after the date of last publication pursuant to subsection (1)(a) of this rule for the submittal of comments.

(4) The Department shall review the application and consider any comments received under section (3) of this rule to determine:

(a) If the proposed allocation of conserved water will result in a reduced diversion for the uses allowed under the original water rights;

(b) If the proposed allocation of conserved water will harm existing water rights;

(c) If the application is consistent with the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans);

(d) The quantity of conserved water needed to mitigate for harm to existing water rights and the quantity of conserved water that may be allocated;

(e) The new rate and duty for the existing water rights held by the applicant and for any out-of-stream use of the conserved water rights;

(f) In consultation with the Departments of Fish and Wildlife, Environmental Quality and Parks and Recreation, if conserved water is needed to support instream uses;

(g) The amounts of water to be allocated to the applicant and, if needed, to the state for an instream water right based on the project costs and the amount of non-reimbursable public funds to be used for the project consistent with ORS 537.470(3);

(h) The areas within which the conserved water may be used for out-of-stream purposes and the stream reaches to which the conserved water may be dedicated for instream purposes;

(i) The periods to be allowed for the applicants to file a notice of completion of the conservation measures and to request that the allocation be finalized pursuant to OAR 690-018-0062. The time allowed between filing the notice of completion of the conservation measures and requesting that the allocation be finalized shall not exceed five years; and

(j) Any other conditions or limitations to be included in the new water rights, including conditions or limitations to prevent or mitigate for harm to existing water rights.

(5) The Department shall provide notice of the determination under section (4) of this rule to the applicant and to each person who commented on the application for allocation of conserved water in response to the public notice under section (3) of this rule.

(6) If a protest to the proposed allocation of conserved water is received by the Department within 60 days of the mailing of the determination provided pursuant to section (5) of this rule, the Director may work with the applicant and any protestant to determine whether the issues can be resolved through mutually agreeable conditions, or by modifying the application

(7) If no protests are received or if the protests are resolved pursuant to section (6) of this rule, the Director shall issue an order consistent with the determination and including any agreed-upon conditions. An order approving an application shall provide for issuance of a certificate superseding the original certificate at the reduced rate and duty and for allocation of the conserved water, contingent upon completion of the proposed project and satisfactory proof of use of the conserved water pursuant to OAR 690-018-0062.

(8) If protests are received raising issues that cannot be resolved pursuant to section (6) of this rule, the Director shall present the application, all protests and a recommendation for action to the Commission for review and action.

(9) The Commission shall examine the application, the protests and the Director's recommendation. If the Commission finds the allocation of conserved water is likely to injure existing water rights or is otherwise inconsistent with these rules, the Commission may direct the Department to hold a contested case hearing on the application pursuant to ORS 183.413 and OAR 690, divisions 1 and 2 or to resume attempts to resolve the disputed issues. If the Commission finds the allocation of conserved water is not likely to injure existing rights and is otherwise consistent with these

rules, the Commission may authorize the Director to issue an order approving the application.

(10) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Director shall follow resolution procedures provided in OAR 690-005-0040 (Resolution of Land Use Disputes).

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455-537.500

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 3-1990, f. & cert. ef. 2-28-90; WRD 12-

1990, f. & cert. ef. 8-8-90; WRD 5-1991, f. & cert. ef. 4-26-91; WRD 15-1994, f. & cert. ef.

12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

690-018-0062

Completion of Conservation Project

(1) If the order approving the application for allocation of conserved water allows a time period for finalizing the allocations water prior to certification, upon notice from the applicant that the project has been completed, the Director shall issue an order:

(a) Canceling the water right held by the applicants that are modified by the allocation of conserved water;

(b) Allowing the continued use of water for the purposes and at the locations described in the original water right certificates at the rate and duty prescribed under OAR 690-018-0050(4)(e); and

(c) Allowing the use and management of the conserved water as a dedication of the water instream.

(2) Consistent with the order approving the allocation of conserved water and at the request of the applicants within the period allowed under the order under OAR 690-018-0050(4)(i), the Director may increase the amount of water to be used pursuant to subsection (1)(b) of this rule and decrease by a like amount the conserved water to be allocated pursuant to OAR 690-018-0050(4)(d) if the Director finds that the changes are necessary because the conservation project has not performed as expected and that the applicants' use of additional water would not be wasteful. A request for additional water submitted under this section shall include sufficient information to demonstrate that:

(a) The project is less effective than was expected when the order approving the allocation of conserved water was issued;

(b) The lack of performance is not caused by the applicants' failure to maintain the project; and

(c) The amount of water remaining for use under the original water rights is insufficient to satisfy the beneficial uses.

(3) Prior to the expiration of the time allowed under OAR 690-018-0050(4)(i), the applicant may request that an allocation of conserved water be finalized. The request shall include:

(a) If all or part of the applicants' portion of the conserved water is to be used for an out-of-stream use at an identified location, the following information:

(A) The name and address of the person using the water;

(B) A description of the type of beneficial use of the water;

(C) A legal description of the place of use; and

(D) A map that meets the standards in OAR 690-310-0050; and

(b) If all or part of the applicants' portion of the conserved water is to be leased, dedicated or temporarily reserved instream, a statement identifying the quantity of water to be managed as an instream water right.

(4) Upon receipt of a request that an allocation of conserved water be finalized or upon the expiration of the time allowed under OAR 690-018-0050(4)(i), the Director shall issue:

(a) A superseding certificate as provided for in the order approving the allocation of conserved water;

(b) A certificate for an instream water right for the state's portion of the conserved water if required under OAR 690-018-0050(4)(g); and

(c) An order allowing:

(A) The use of any portion of the conserved water allocated to the applicants, at the location and for the type of use identified pursuant to subsection (3)(a) of this rule;

(B) The use and management as an instream water right of any conserved water that is being leased, dedicated or temporarily reserved instream.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455-537.500

Hist.: WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

690-018-0090

Change in Use of Conserved Water

(1) Any person or agency entitled to the use of conserved water shall notify the Director of any change in the type of use, place of use or point of diversion. The notice must be submitted 60 days before the actual change and must include the information requested in OAR 690-018-0062(3)(a).

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(2) The Director shall approve a change in the type of use, place of use, or point of diversion for conserved water if:

(a) The proposed new use is within the area described under OAR 690-018-0050(4)(h);

(b) The proposed change would not constitute an expansion of the right; and

(c) The approval is consistent with OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).

(3) A change in the dispensation of the use of a conserved water right may be initiated 60 days after the notice prescribed in section (1) of this rule if the Director takes no action within that period.

(4) When a right to the use of conserved water is sold or given to an agency or political subdivision of the state or to a person:

(a) The right shall become appurtenant to the premises upon which use is made;

(b) A certificate of water right shall be issued upon satisfactory proof of use; and

(c) Unless dedicated to instream use, the right shall be subject to the provisions of ORS 540.510 to 540.539, 540.572 to 540.578, and 540.610 to 540.670.

(5) Upon approval of a change in the use or point of diversion proposed under this rule, the Director shall issue a new order to allow the new use of the conserved water.

(6) Any changes in the type of use, place of use, or point of diversion that are not provided for under this rule shall only be made after compliance with the transfer rules in OAR 690, division 380.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455-537.500

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

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Rules Amended: 690-380-0010, 690-380-0090, 690-380-0100, 690-380-2110, 690-380-3000, 690-380-3100, 690-380-3200, 690-380-4000, 690-380-4010, 690-380-5000

Subject: The Water Resources Commission amended rules relating to water right transfers (OAR Chapter 690, Division 380).

The amendments to the water right transfer rules streamline the transfer application requirements and potentially reduce the cost associated with a water right transfer. The amendments clarify that an electronically generated seal is acceptable on certified water right examiner maps and clarified other aspects of the mapping requirements for transfer applications.

Rules Coordinator: Adam Sussman—(503) 986-0877

690-380-0010

Purpose

(1) The rules in OAR 690, division 380 establish requirements and procedures that shall be used by the Department to evaluate an application to change a water use subject to transfer. The rules describe the requirements for permanently changing the use, place of use, point of diversion or point of appropriation of a water use subject to transfer and for temporarily changing the character of use of stored water and the place of use of a water use subject to transfer.

(2) A water user may make the following changes without filing a transfer application pursuant to ORS 540.520 and OAR 690-380-3000:

(a) The allocation of conserved water, however, an application for allocation of conserved water is required pursuant to ORS 537.455 to 537.500 and OAR 690, division 18 and notice of a change in place of use of conserved water is required pursuant to 537.490;

(b) Use water at an additional or different place of use under a water use subject to transfer issued to a municipality, rights conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132 provided the water use complies with the requirements under ORS 540.510(3)(a)(A) to (C) and 540.510(3)(b);

(c) Use water at a different place of use under a permit or certificate issued to a district pursuant to ORS 540.570 to 540.580 and OAR 690, division 385, however, a petition for the change must be submitted to the Department by the district;

(d) A change in point of diversion pursuant to ORS 540.510(5) and the diversion is provided with a proper fish screen, if requested by ODFW;

(e) A point of diversion change caused by government action pursuant to ORS 540.510(6) provided that the owner notifies the Department before changing the point of diversion;

(f) A point of appropriation or diversion change or a place of use change under a water use permit through a permit amendment for which an application has been filed and approved by the Department pursuant to ORS 537.211(4) to (9);

(g) Water right changes made for lands not described in a permit when the Department issues a certificate pursuant to ORS 537.252;

(h) An exchange of water that meets the criteria in ORS 540.533 and 540.537 if the exchange is approved pursuant to OAR 690-380-2260;

(i) A change in character of use from a specific industrial use to general industrial use provided notice is provided to the Department of the change and the change is consistent with the criteria in OAR 690-380-2340; and

(j) Any change of use if the beneficial use authorized by the water use subject to transfer is irrigation and the owner of the water right uses the water for incidental agricultural, stock watering and other uses related to irrigation use, so long as there is no increase in the rate, duty, total acreage benefited or season of use.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510-ORS 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03; Renumbered from 690-015-0001; WRD 8-2004, f. & cert. ef. 11-5-04

690-380-0090

Applicability

The rules in OAR 690, division 380 shall apply to all applications received by the Department after July 1, 2003 and all transfers for which a final order has not been issued by the Department by July 1, 2003 except as follows:

(1) Until July 1, 2003, the Department shall accept applications that conform to the requirements of either OAR 690-380-3000 or 690-015-0060 as adopted by the Commission in June 1996.

(2) Notice of receipt of an application pursuant to OAR 690-380-4000(3) shall not be required if notice of the application has previously been published in the Department's weekly notice pursuant to OAR 690-015-0080(1) as adopted by the Commission in June 1996.

(3) Until July 1, 2003 or if protests are filed during the period described in OAR 690-015-0080 as adopted by the Commission in June 1996, at the discretion of the Director, the Department may:

(a) Prepare a preliminary determination and initiate the procedures described under OAR 690-380-4010 to 690-380-4200; or

(b) Issue a final order pursuant to OAR 690, division 15 as adopted by the Commission in June 1996.

(4) If affidavits are filed pursuant to OAR 690-017-0400, at the discretion of the Director, the Department may:

(a) Prepare a preliminary determination and initiate the procedures described under OAR 690-380-4010 to 690-380-4200; or

(b) Initiate cancellation proceedings under OAR 690, division 17.

(5) The Department shall provide notice of any preliminary determination by publication in the Department's weekly notice, but shall not require newspaper notice pursuant to OAR 690-380-4020(1)(b) if newspaper notice has previously been published pursuant to OAR 690-015-0080(1) as adopted by the Commission in June 1996.

(6) The Department shall not apply OAR 690-380-4010(5) to applications filed prior to January 1, 2005, if a lot book report or a report of ownership and lien information was included with the application.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510-ORS 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03; WRD 8-2004, f. & cert. ef. 11-5-04

690-380-0100

Definitions

The definitions in this rule, along with the definitions in OAR 690-008-0001 and 690-300-0010, apply to the rules in OAR 690, division 380. Where a term is defined in more than one rule, the definition in this rule applies.

(1) "District" means an irrigation district formed under ORS Chapter 545, a drainage district formed under ORS Chapter 547, a water improvement district formed under ORS Chapter 552, a water control district formed under ORS Chapter 553 or a corporation organized under ORS Chapter 554.

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(2) "Enlargement" means an expansion of a water right and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a right;

(b) Increasing the acreage irrigated under a right;

(c) Failing to keep the original place of use from receiving water from the same source; or

(d) Diverting more water at the new point of diversion or appropriation than is legally available to that right at the original point of diversion or appropriation.

(3) "Injury" or "Injury to an existing water right" means a proposed transfer would result in another, existing water right not receiving previously available water to which it is legally entitled.

(4) "ODFW" means the Oregon Department of Fish and Wildlife.

(5) "Point of appropriation" means a well or the pump location on a sump at which ground water is withdrawn from the ground for use under a ground water right.

(6) "Point of diversion" means the place at which surface water is diverted from a surface water source as specified in the water right. It may be the head of a ditch, a pump suction line, the center line of a dam, or other point at which control is taken of surface water.

(7) "Primary water right" means the water right designated by the Commission as the principal water supply for the authorized use, or if no designation has been made, the water right designated by the applicant as the principal water supply for the authorized use.

(8) "Protest" means a written statement expressing opposition to approval of a transfer application and disagreement with a preliminary determination that is filed in response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020 and includes the fee prescribed in ORS 536.050.

(9) "Quitclaim Deed" means a document recorded in the deed records by the relevant county that releases and quitclaims the landowner's interest in a water right and provides a legal description of the subject lands.

(10) "Report of ownership and lien information" means a document prepared by a title company that includes current ownership, a legal description of the lands, identification of lien holders, and any Quitclaim Deed releasing the landowner's interest in the subject water rights.

(11) "Standing statement" means a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020.

(12) "Supplemental water right or permit" means an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water right or permit is used in conjunction with a primary water right.

(13) "Water use subject to transfer" means a water use established by:

(a) An adjudication under ORS Chapter 539 as evidenced by court decree;

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under ORS 537.250; or

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510-540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03; Renumbered from 690-015-0005; WRD 8-2004, f. & cert. ef. 11-5-04

690-380-2110

Change in Point of Diversion or Point of Appropriation

(1) Except as provided in ORS 540.531 and OAR 690-380-2130, a change in point of diversion is restricted to the same source of surface water. A change in point of appropriation is restricted to the same aquifer.

(2) As provided in ORS 450.695(2), a water authority may change the points of diversion or move the water intake sources of the water use permits or certificates conveyed to it by the districts and municipalities that formed the water authority. For the purposes of this subsection, moving a water intake source is the same as changing the location of a point of diversion. Water authorities shall be subject to the following requirements:

(a) A request by a water authority to change the location of a point of diversion from that authorized by a water right certificate shall be made pursuant to ORS Chapter 540 and OAR 690, division 380 transfer rules;

(b) A request by a water authority to change the location of a point of diversion authorized by a water use permit, as defined in OAR 690-380-0100(13)(c), shall be subject to the same statutory and administrative

review criteria prescribed by ORS Chapter 540 and OAR 690, division 380 transfer rules for water uses subject to transfer; and

(c) A request by a water authority for changes in the point of diversion for water right permits other than those covered under subsection (2)(b) of this rule, shall be made pursuant to ORS 537.211.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 450.695 & ORS 540.510-540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90, Renumbered from 690-015-0015; WRD 19-1990, f. & cert. ef. 12-14-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03; Renumbered from 690-015-0010; WRD 8-2004, f. & cert. ef. 11-5-04

690-380-3000

Application for Transfer

Each transfer application shall be prepared in ink or typewritten on forms provided by the Department. Applications shall contain the following information concerning the primary water right and any appurtenant supplemental water right or permit, if applicable:

(1) Applicant's name, mailing address, and telephone number.

(2) Type of change proposed.

(3) Name appearing on permit, certificate, decree or proof of appropriation.

(4) Name of decree and certificate number, if applicable.

(5) Permit number and certificate number, if applicable.

(6) Source of water (from permit, decree or certificate).

(7) Date of priority.

(8) The existing and proposed points of diversion or points of appropriation located accurately in reference to a public land survey corner.

(9) The authorized existing use of water.

(10) A description of the current water delivery system that demonstrates that the applicant is ready, willing, and able to exercise the right and includes information on the capacity of any pumps, canals, and pipelines used to divert and convey the water to the authorized use.

(11) The authorized place of use identified by its location within the public land survey and tax lot number.

(12) Evidence that the water has been used over the past five years in accordance with the terms and conditions of the right or that the right is not subject to forfeiture under ORS 540.610. The evidence shall include the following information:

(a) If the right has been used during the past five years, one or more affidavits from persons, such as the owner or operator, a neighbor, crop field person for a cannery or other product buyer, or Natural Resources Conservation Service (NRCS) representatives, who can attest from personal knowledge or professional expertise that the right was exercised at the authorized location and for the authorized purpose. Such affidavits shall state the specific grounds for the affiant's knowledge, the specific use to which the water was put (e.g., the crops grown, the nursery stock watered), and the delivery system used to apply the water and include supporting documentation such as:

(A) Copies of receipts from sales of irrigated crops or for expenditures relating to use of water;

(B) Records such as Farm Service Agency crop reports, irrigation district records, an NRCS farm management plan, or records of other water suppliers; or

(C) Dated aerial photographs of the lands or other photographs containing sufficient detail to establish the location and date of the photograph, or

(b) If the right has not been used during the past five years, documentation that the presumption of forfeiture would be rebutted under ORS 540.610(2).

(13) For permanent transfers under OAR 690-380-2000:

(a) A signed statement that the applicant understands that, prior to Department approval of the transfer, the applicant must submit proof that the landowner or the entity to whom the water right has been quitclaimed, identified in the report of ownership and lien information required under OAR 690-380-4010, consents to the transfer;

(b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; or

(c) Documentation that the applicant is an entity with the authority to and is acquiring by condemnation the property appurtenant to the water right proposed for transfer. Such an entity may only apply for a water right appurtenant to lands to be condemned if it has filed a condemnation action to acquire the property and deposited the funds with the court as required by ORS 35.265. Such an entity need not obtain the consent or authorization for the change from any other person or entity.

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(15) For temporary transfers under OAR 690-380-8000, name of the deeded landowner of the land to which the water right is appurtenant and a copy of the recorded deed to the subject lands. If the applicant is not the deeded landowner, the applicant shall provide a notarized statement from the landowner authorizing the change.

(16) A copy of a written notification of the proposed transfer provided by the applicant to all lien holders on the subject lands unless the report on ownership and lien information shows that a Quitclaim Deed has been recorded on the subject lands.

(17) The proposed use of water.

(18) The proposed place of use shall be identified by its location within the public land survey and tax lot number. The name and address of each receiving owner(s), by parcel.

(19) Reason for the proposed change.

(20) Map as required in OAR 690-380-3100 with an original stamp and signature of the certified water rights examiner or a waiver of mapping requirements approved pursuant to OAR 690-380-3410. An electronically generated seal is acceptable provided the signature is original.

(21) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those transfers that meet the following four requirements:

(a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;

(b) That involve changes in place of use only;

(c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and

(d) That involve irrigation water uses only.

(22) If the request is for a change in point of diversion to a well, or a change in point of appropriation, copies of water well reports for the authorized and proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the groundwater body developed or proposed to be developed.

(23) A listing of the names and mailing addresses of:

(a) All affected local governments, including but not limited to, county, city, municipal corporations, and tribal governments; and

(b) Any district in which the affected water right is located or that serves the right and any district in which the affected water right would be located or that would serve the right after the proposed transfer.

(24) An oath that the information contained in the application is true and accurate.

(25) If a portion of the fee is waived pursuant to OAR 690-380-3400, documentation showing that the proposed transfer qualifies for the fee waiver.

(26) The signature of the applicant, and if an entity, the title of the person signing the form.

(27) The appropriate fee as required under ORS 536.050, less any portion waived pursuant to OAR 690-380-3400.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510-540.531

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 1-2000(Temp), f. 5-16-00, cert. ef. 5-16-00 thru 11-10-00; Administrative correction 6-21-01; WRD 2-2003, f & cert. ef. 5-1-03; Renumbered from 690-015-0060; WRD 8-2004, f. & cert. ef. 11-5-04

690-380-3100

Map Requirements

(1) A map prepared by a certified water right examiner shall be included with a transfer application as required under OAR 690-380-3000. The map shall meet the following criteria:

(a) The map shall be of permanent quality and shall be printed with dark ink on a white or clear medium that is easily reproduced on a standard copy machine. Color copies that cannot be easily interpreted when copied to black and white will not be accepted.

(b) The preferred map size is 8 1/2" x 11" (letter) at the scale of the final proof or adjudication map for the existing right of record, with supplemental detail maps as needed. If a larger map is required to provide sufficient detail, a size of 8 1/2" x 14" (legal) or 11" x 17" (oversized) may be used.

(c) Notwithstanding subsection (1)(b) of this rule, a map size of up to 30" x 30" may be used if the Department grants advance written or e-mail approval and five copies of the application map are submitted.

(d) The map scale shall be:

(A) 1" = 400';

(B) 1" = 1,320';

(C) The scale of the final proof or adjudication map for the existing right of record;

(D) The scale of the county assessor map if the scale is not smaller than 1" = 1,320'; or

(E) Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale.

(e) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.

(f) The map shall be plotted to the accuracy consistent with the map scale.

(g) The locations of points of diversion and places of use shall be described by distance and bearing or coordinates (distance north or south and east or west) from a recognized survey corner or by latitude-longitude coordinates. Latitude-longitude coordinates shall be expressed as either:

(A) Degrees-minutes-seconds with at least one digit after the decimal in the seconds portion (e.g., 42° 32' 15.5"); or

(B) Degrees-decimal with five or more digits after the decimal (e.g., 42.53764°).

(2) The map(s) shall include the following information:

(a) A north arrow, the scale, a clear legend, the certified water rights examiner's stamp and signature. An electronically generated stamp or seal is acceptable provided the signature is original;

(b) The location of each existing and proposed point of diversion or point of appropriation;

(c) For a change in point of diversion or appropriation that does not also include a change in place of use, identification of the lands to be served by the proposed point of diversion or appropriation. If the proposed point of diversion or appropriation is intended to serve the entire right of record, a copy of the existing final proof survey map for the right of record may be submitted to satisfy this requirement. If the proposed point of diversion or appropriation is not intended to serve the entire right of record, the specific lands to be served shall be identified and the number of certificated acres to be served by the new point of diversion or appropriation shall be listed;

(d) For a change in place of use or character of use, the location of the authorized and proposed place of use of the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions;

(e) The location of any part of the right not involved in the proposed transfer. For transfers involving less than 67 percent of the entire place of use of the right, the map shall include at least the location of the portions of the right not involved in the proposed transfer which are included in the same quarter-quarter sections as the proposed transfer. The applicant shall have the burden of proving the proposed transfer involves less than 67 percent of the entire place of use of the water use subject to transfer. However, the Department may require a greater portion of the use subject to transfer or the entire use subject to transfer be mapped, if necessary to make a determination of potential injury;

(f) The location of township, range, section, quarter-quarter section, donation land claim, and other recognized public land survey lines;

(g) Notwithstanding the requirements of subsection (1)(f), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features;

(h) Notwithstanding the requirements of subsection (1)(f), the general location of physical features sufficient to assist in defining the location of the place of use of the water use subject to transfer. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate; and

(i) The location of property lines for the property involved in the transfer, in the vicinity of the transfer. For transfer of municipal, quasi-municipal, and other similar rights, the property lines need not be shown, however, the service area boundaries shall be indicated.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510-540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f & cert. ef. 5-1-03; Renumbered from 690-015-0070; WRD 8-2004, f. & cert. ef. 11-5-04

690-380-3200

District May Submit Application for Water Users

(1) A district, authorized to act on behalf of its members, may apply for a water right transfer under the provisions of ORS 540.520 If the proposed change is for other than a change in point of diversion, the applica-

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tion shall contain a notarized statement from the owner of the right authorizing the proposed change.

(2) An application for a change in the place of use of water rights managed by a district may be made pursuant to OAR 690, division 385.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510-540.520

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f & cert. ef. 5-1-03; Renumbered from 690-015-0020; WRD 8-2004, f. & cert. ef. 11-5-04

690-380-4000

Request for Comments

(1) On receipt of an application for transfer, the Department shall review the application to determine if the applicant has included the information required by OAR 690-380-3000 and if the water rights proposed for transfer are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(13).

(2) If the Department determines that the application does not include the required information or that the water rights proposed for transfer are not subject to transfer, the Department shall return the application and any fees to the applicant along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water rights proposed for transfer are uses subject to transfer, the Department shall file the application and request public comments on the application:

(a) In the weekly notice published by the Department; and

(b) By mail to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-380-3000(21).

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510-540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03; WRD 8-2004, f. & cert. ef. 11-5-04

690-380-4010

Preliminary Determination

(1) After the conclusion of the public comment period described in OAR 690-380-4000(4), the Department shall prepare a preliminary determination of whether the application should be approved or rejected taking into account comments received in response to the notice provided under OAR 690-380-4000 and the considerations described in section (2) of this rule.

(2) The Department's preliminary determination shall include an assessment of whether:

(a) The right has been used over the past five years according to the terms and conditions of the right and that the right is not subject to forfeiture under ORS 540.610;

(b) The water user is ready, willing and able to use the full amount of water allowed under the right;

(c) The proposed transfer would result in enlargement;

(d) The proposed transfer would result in injury; and

(e) Any other requirements for water right transfers are met.

(3) For a preliminary determination that indicates that an application should be rejected, the preliminary determination shall:

(a) Describe the basis for the rejection; and

(b) Identify any conditions or restrictions that, if included in the transfer, would allow approval of the transfer.

(4) The Department shall provide a copy of the draft preliminary determination to the applicant and provide the applicant a period of at least 30 days to amend the application to address any issues identified by the Department in the preliminary determination, including the quantity of water to be transferred, or to withdraw the application.

(5) For permanent transfers under OAR 690-380-2000, upon receipt of the draft preliminary determination, the applicant must:

(a) Show that proof of land ownership is not required pursuant to OAR 690-380-3000(13); or

(b) Submit a report of ownership and lien information for the land to which the water right is appurtenant prepared within the prior three months. The report of ownership and lien information need only include current ownership, a legal description of the lands, identification of lien holders, and any Quitclaim Deeds releasing the landowner's interest in the subject water rights. If the landowner identified in the report of ownership and lien information is not the applicant or the entity to whom the water right has been quitclaimed, the applicant must also submit a notarized statement by the landowner or entity to whom the water right has been quitclaimed consenting to the transfer.

(6) The draft preliminary determination shall constitute the notification of the Department's intent to cancel a supplemental right required under OAR 690-380-2250.

(7) If the applicant amends the application or provides additional information in support of approval of the application, the Department shall revise the preliminary determination as appropriate.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510-540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03; WRD 8-2004, f. & cert. ef. 11-5-04

690-380-5000

Approval of Transfers

(1) A transfer application shall be approved if the Department determines that:

(a) The water right affected by the proposed transfer is a water use subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(13) and, for a right described under OAR 690-380-0100(13)(d), the proof of completion has been approved under OAR 690-380-6040;

(b) The portion of the water right to be transferred is not cancelled pursuant to ORS 540.610;

(c) The proposed transfer would not result in enlargement as defined in OAR 690-380-0100(2);

(d) Except as provided in OAR 690-380-5030, the proposed transfer would not result in injury as defined in OAR 690-380-0100(3); and

(e) Any other requirements for water right transfers are met.

(2) The Department shall issue a final order consistent with the preliminary determination described in OAR 690-380-4010 if no protests or notifications of intent are received under OAR 690-380-4030(1).

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510-540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f & cert. ef. 5-1-03; Renumbered from 690-015-0050; WRD 8-2004, f. & cert. ef. 11-5-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
101-001-0000	7-2-04	Amend	8-1-04	101-020-0018	12-4-03	Amend	1-1-04
101-001-0005	7-2-04	Amend	8-1-04	101-020-0018	7-2-04	Amend	8-1-04
101-001-0010	7-2-04	Amend	8-1-04	101-020-0018	10-7-04	Amend	11-1-04
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101-002-0005	7-2-04	Amend	8-1-04	101-020-0025	7-2-04	Amend	8-1-04
101-002-0010	7-2-04	Amend	8-1-04	101-020-0025	10-7-04	Amend	11-1-04
101-002-0015	7-2-04	Amend	8-1-04	101-020-0030	12-4-03	Amend	1-1-04
101-002-0020	7-2-04	Amend	8-1-04	101-020-0030	7-2-04	Amend	8-1-04
101-005-0010	12-4-03	Adopt	1-1-04	101-020-0030	10-7-04	Amend	11-1-04
101-005-0010	7-2-04	Amend	8-1-04	101-020-0035	12-4-03	Amend	1-1-04
101-005-0020	12-4-03	Adopt	1-1-04	101-020-0035	7-2-04	Amend	8-1-04
101-005-0020	7-2-04	Amend	8-1-04	101-020-0040	12-4-03	Amend	1-1-04
101-005-0030	12-4-03	Adopt	1-1-04	101-020-0040	7-2-04	Amend	8-1-04
101-005-0030	7-2-04	Amend	8-1-04	101-020-0040	10-7-04	Amend	11-1-04
101-005-0040	12-4-03	Adopt	1-1-04	101-020-0045	7-2-04	Amend	8-1-04
101-005-0040	7-2-04	Amend	8-1-04	101-020-0045	10-7-04	Amend	11-1-04
101-005-0050	12-4-03	Adopt	1-1-04	101-030-0005	12-4-03	Amend	1-1-04
101-005-0050	7-2-04	Amend	8-1-04	101-030-0005	7-2-04	Amend	8-1-04
101-005-0060	12-4-03	Adopt	1-1-04	101-030-0005	10-7-04	Amend	11-1-04
101-005-0060	7-2-04	Amend	8-1-04	101-030-0010	7-2-04	Amend	8-1-04
101-005-0070	12-4-03	Adopt	1-1-04	101-030-0010	10-7-04	Amend	11-1-04
101-005-0070	7-2-04	Amend	8-1-04	101-030-0015	7-2-04	Amend	8-1-04
101-005-0080	12-4-03	Adopt	1-1-04	101-030-0015	10-7-04	Amend	11-1-04
101-005-0080	7-2-04	Amend	8-1-04	101-030-0020	7-2-04	Amend	8-1-04
101-005-0090	12-4-03	Adopt	1-1-04	101-030-0020	10-7-04	Amend	11-1-04
101-005-0090	7-2-04	Amend	8-1-04	101-030-0022	12-4-03	Adopt	1-1-04
101-005-0100	12-4-03	Adopt	1-1-04	101-030-0022	7-2-04	Amend	8-1-04
101-005-0100	7-2-04	Amend	8-1-04	101-030-0022	10-7-04	Amend	11-1-04
101-005-0110	12-4-03	Adopt	1-1-04	101-030-0025	7-2-04	Amend	8-1-04
101-005-0110	7-2-04	Amend	8-1-04	101-030-0025	10-7-04	Amend	11-1-04
101-005-0120	12-4-03	Adopt	1-1-04	101-030-0030	7-2-04	Amend	8-1-04
101-005-0120	7-2-04	Amend	8-1-04	101-030-0030	10-7-04	Amend	11-1-04
101-005-0130	12-4-03	Adopt	1-1-04	101-030-0035	7-2-04	Amend	8-1-04
101-005-0130	7-2-04	Amend	8-1-04	101-030-0040	12-4-03	Amend	1-1-04
101-005-0140	12-4-03	Adopt	1-1-04	101-030-0040	7-2-04	Amend	8-1-04
101-005-0140	7-2-04	Amend	8-1-04	101-030-0040	10-7-04	Amend	11-1-04
101-006-0010	12-4-03	Adopt	1-1-04	101-040-0005	12-4-03	Amend	1-1-04
101-006-0010	7-2-04	Amend	8-1-04	101-040-0005	7-2-04	Amend	8-1-04
101-006-0020	12-4-03	Adopt	1-1-04	101-040-0005	10-7-04	Amend	11-1-04
101-006-0020	7-2-04	Amend	8-1-04	101-040-0010	12-4-03	Amend	1-1-04
101-010-0005	12-4-03	Amend	1-1-04	101-040-0010	7-2-04	Amend	8-1-04
101-010-0005	7-2-04	Amend	8-1-04	101-040-0010	10-7-04	Amend	11-1-04
101-010-0005	10-7-04	Amend	11-1-04	101-040-0015	7-2-04	Amend	8-1-04
101-015-0005	7-2-04	Amend	8-1-04	101-040-0015	10-7-04	Amend	11-1-04
101-015-0005	10-7-04	Amend	11-1-04	101-040-0020	7-2-04	Amend	8-1-04
101-015-0010	7-2-04	Adopt	8-1-04	101-040-0020	10-7-04	Amend	11-1-04
101-020-0005	7-2-04	Amend	8-1-04	101-040-0025	12-4-03	Amend	1-1-04
101-020-0005	10-7-04	Amend	11-1-04	101-040-0025	7-2-04	Amend	8-1-04
101-020-0010	12-4-03	Amend	1-1-04	101-040-0025	10-7-04	Amend	11-1-04
101-020-0010	7-2-04	Amend	8-1-04	101-040-0030	12-4-03	Amend	1-1-04
101-020-0010	10-7-04	Amend	11-1-04	101-040-0030	7-2-04	Amend	8-1-04
101-020-0015	12-4-03	Amend	1-1-04	101-040-0030	10-7-04	Amend	11-1-04
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101-040-0040	7-2-04	Amend	8-1-04	123-006-0010	8-5-04	Repeal	9-1-04
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101-040-0045	12-4-03	Amend	1-1-04	123-006-0015	6-15-04	Amend(T)	7-1-04
101-040-0045	7-2-04	Amend	8-1-04	123-006-0015	8-5-04	Amend	9-1-04
101-040-0045	10-7-04	Amend	11-1-04	123-006-0020	6-15-04	Amend(T)	7-1-04
101-040-0050	12-4-03	Amend	1-1-04	123-006-0020	8-5-04	Amend	9-1-04
101-040-0050	7-2-04	Amend	8-1-04	123-006-0025	6-15-04	Amend(T)	7-1-04
101-040-0050	10-7-04	Amend	11-1-04	123-006-0025	8-5-04	Amend	9-1-04
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101-040-0055	10-7-04	Adopt	11-1-04	123-006-0051	12-23-03	Adopt(T)	2-1-04
101-040-0060	12-4-03	Repeal	1-1-04	123-018-0055	10-15-04	Amend(T)	11-1-04
101-040-0070	12-4-03	Repeal	1-1-04	123-020-0000	2-21-04	Adopt(T)	3-1-04
101-040-0080	12-4-03	Adopt	1-1-04	123-020-0005	2-21-04	Amend(T)	3-1-04
101-040-0080	7-2-04	Amend	8-1-04	123-020-0005	8-2-04	Am. & Ren.	9-1-04
101-040-0080	10-7-04	Amend	11-1-04	123-020-0010	2-21-04	Amend(T)	3-1-04
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101-050-0010	12-4-03	Amend	1-1-04	123-020-0015	8-2-04	Am. & Ren.	9-1-04
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101-050-0010	10-7-04	Amend	11-1-04	123-020-0020	8-2-04	Am. & Ren.	9-1-04
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101-050-0015	7-2-04	Amend	8-1-04	123-020-0025	8-2-04	Am. & Ren.	9-1-04
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101-050-0020	7-2-04	Amend	8-1-04	123-020-0030	8-2-04	Am. & Ren.	9-1-04
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101-050-0025	12-4-03	Amend	1-1-04	123-020-0035	8-2-04	Am. & Ren.	9-1-04
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101-050-0025	10-7-04	Amend	11-1-04	123-020-0040	8-2-04	Am. & Ren.	9-1-04
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105-040-0050	11-25-03	Amend(T)	1-1-04	123-023-0451	5-24-04	Am. & Ren.	7-1-04
105-040-0050	3-15-04	Amend	4-1-04	123-023-0501	5-24-04	Am. & Ren.	7-1-04
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122-070-0070	12-4-03	Amend	1-1-04	123-025-0012	8-2-04	Adopt	9-1-04
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123-001-0750	7-27-04	Adopt	9-1-04	123-025-0017	8-2-04	Amend	9-1-04
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123-025-0030	2-3-04	Amend(T)	3-1-04	123-042-0040	2-3-04	Amend(T)	3-1-04
123-025-0030	8-2-04	Amend	9-1-04	123-042-0040	8-2-04	Amend	9-1-04
123-027-0035	2-3-04	Amend(T)	3-1-04	123-042-0050	2-3-04	Suspend	3-1-04
123-027-0040	2-3-04	Amend(T)	3-1-04	123-042-0050	8-2-04	Repeal	9-1-04
123-027-0040	8-19-04	Amend	10-1-04	123-042-0060	2-3-04	Suspend	3-1-04
123-027-0040	11-8-04	Amend	12-1-04	123-042-0060	8-2-04	Repeal	9-1-04
123-027-0050	2-3-04	Amend(T)	3-1-04	123-042-0070	2-3-04	Amend(T)	3-1-04
123-027-0050	8-19-04	Amend	10-1-04	123-042-0070	8-2-04	Amend	9-1-04
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123-027-0056	8-19-04	Adopt	10-1-04	123-042-0075	8-2-04	Repeal	9-1-04
123-027-0060	2-3-04	Amend(T)	3-1-04	123-042-0080	2-3-04	Amend(T)	3-1-04
123-027-0060	8-19-04	Amend	10-1-04	123-042-0080	8-2-04	Amend	9-1-04
123-027-0070	2-3-04	Amend(T)	3-1-04	123-042-0130	8-2-04	Repeal	9-1-04
123-027-0070	8-19-04	Amend	10-1-04	123-042-0140	2-3-04	Suspend	3-1-04
123-027-0070	11-8-04	Amend	12-1-04	123-042-0140	8-2-04	Repeal	9-1-04
123-027-0080	2-3-04	Suspend	3-1-04	123-042-0150	2-3-04	Amend(T)	3-1-04
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123-027-0110	8-19-04	Am. & Ren.	10-1-04	123-042-0170	8-2-04	Repeal	9-1-04
123-027-0155	2-3-04	Adopt(T)	3-1-04	123-042-0180	2-3-04	Amend(T)	3-1-04
123-027-0156	8-19-04	Adopt	10-1-04	123-042-0180	8-2-04	Amend	9-1-04
123-027-0160	2-3-04	Adopt(T)	3-1-04	123-042-0190	2-3-04	Amend(T)	3-1-04
123-027-0161	8-19-04	Adopt	10-1-04	123-042-0190	8-2-04	Amend	9-1-04
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123-027-0166	8-19-04	Adopt	10-1-04	123-043-0045	3-22-04	Amend	5-1-04
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123-055-0525	8-2-04	Amend	9-1-04	125-125-0050	9-1-04	Adopt	8-1-04
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123-057-0110	2-3-04	Amend(T)	3-1-04	125-125-0250	3-5-04	Adopt(T)	4-1-04
123-057-0110	8-2-04	Amend	9-1-04	125-125-0250	9-1-04	Adopt	8-1-04
123-057-0130	2-3-04	Amend(T)	3-1-04	125-125-0300	3-5-04	Adopt(T)	4-1-04
123-057-0130	8-2-04	Amend	9-1-04	125-125-0300	9-1-04	Adopt	8-1-04
123-057-0170	2-3-04	Amend(T)	3-1-04	125-125-0350	3-5-04	Adopt(T)	4-1-04
123-057-0170	8-2-04	Amend	9-1-04	125-125-0350	9-1-04	Adopt	8-1-04
123-057-0190	2-3-04	Amend(T)	3-1-04	125-125-0400	3-5-04	Adopt(T)	4-1-04
123-057-0190	8-2-04	Amend	9-1-04	125-125-0400	9-1-04	Adopt	8-1-04
123-057-0210	2-3-04	Amend(T)	3-1-04	125-125-0450	3-5-04	Adopt(T)	4-1-04
123-057-0210	8-2-04	Amend	9-1-04	125-125-0450	9-1-04	Adopt	8-1-04
123-057-0230	2-3-04	Amend(T)	3-1-04	137-001-0070	12-9-03	Amend	1-1-04
123-057-0230	8-2-04	Amend	9-1-04	137-001-0085	12-9-03	Repeal	1-1-04
123-057-0310	2-3-04	Amend(T)	3-1-04	137-003-0000	1-1-04	Amend	1-1-04
123-057-0310	8-2-04	Amend	9-1-04	137-003-0501	1-1-04	Amend	1-1-04
123-057-0330	2-3-04	Amend(T)	3-1-04	137-003-0510	1-1-04	Amend	1-1-04
123-057-0330	8-2-04	Amend	9-1-04	137-003-0515	1-1-04	Amend	1-1-04
123-057-0350	2-3-04	Amend(T)	3-1-04	137-003-0520	1-1-04	Amend	1-1-04
123-057-0350	8-2-04	Amend	9-1-04	137-003-0525	1-1-04	Amend	1-1-04
123-057-0410	2-3-04	Amend(T)	3-1-04	137-003-0528	1-1-04	Amend	1-1-04
123-057-0410	8-2-04	Amend	9-1-04	137-003-0530	1-1-04	Amend	1-1-04
123-057-0430	2-3-04	Amend(T)	3-1-04	137-003-0535	1-1-04	Amend	1-1-04
123-057-0430	8-2-04	Amend	9-1-04	137-003-0540	1-1-04	Amend	1-1-04
123-057-0450	2-3-04	Amend(T)	3-1-04	137-003-0545	1-1-04	Amend	1-1-04
123-057-0450	8-2-04	Amend	9-1-04	137-003-0555	1-1-04	Amend	1-1-04
123-057-0470	2-3-04	Amend(T)	3-1-04	137-003-0560	1-1-04	Amend	1-1-04
123-057-0470	8-2-04	Amend	9-1-04	137-003-0565	1-1-04	Amend	1-1-04
123-057-0510	2-3-04	Amend(T)	3-1-04	137-003-0570	1-1-04	Amend	1-1-04
123-057-0510	8-2-04	Amend	9-1-04	137-003-0572	1-1-04	Amend	1-1-04
123-057-0530	2-3-04	Amend(T)	3-1-04	137-003-0573	1-1-04	Amend	1-1-04
123-057-0530	8-2-04	Amend	9-1-04	137-003-0575	1-1-04	Amend	1-1-04
123-057-0710	2-3-04	Amend(T)	3-1-04	137-003-0580	1-1-04	Amend	1-1-04
123-057-0710	8-2-04	Amend	9-1-04	137-003-0585	1-1-04	Amend	1-1-04
123-068-0015	12-15-03	Adopt(T)	1-1-04	137-003-0590	1-1-04	Amend	1-1-04
123-068-0105	12-15-03	Adopt(T)	1-1-04	137-003-0595	1-1-04	Amend	1-1-04
123-068-0205	12-15-03	Adopt(T)	1-1-04	137-003-0600	1-1-04	Amend	1-1-04
123-068-0305	12-15-03	Adopt(T)	1-1-04	137-003-0605	1-1-04	Amend	1-1-04
123-145-0010	7-27-04	Am. & Ren.	9-1-04	137-003-0610	1-1-04	Amend	1-1-04
123-145-0020	7-27-04	Am. & Ren.	9-1-04	137-003-0615	1-1-04	Amend	1-1-04
123-145-0030	7-27-04	Am. & Ren.	9-1-04	137-003-0625	1-1-04	Amend	1-1-04
123-145-0040	7-27-04	Am. & Ren.	9-1-04	137-003-0630	1-1-04	Amend	1-1-04
123-145-0050	7-27-04	Am. & Ren.	9-1-04	137-003-0635	1-1-04	Amend	1-1-04
123-145-0060	7-27-04	Am. & Ren.	9-1-04	137-003-0640	1-1-04	Amend	1-1-04
123-145-0070	7-27-04	Am. & Ren.	9-1-04	137-003-0645	1-1-04	Amend	1-1-04
123-145-0080	7-27-04	Am. & Ren.	9-1-04	137-003-0650	1-1-04	Amend	1-1-04

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137-003-0660	1-1-04	Amend	1-1-04	137-030-0115	3-1-05	Repeal	10-1-04
137-003-0665	1-1-04	Amend	1-1-04	137-030-0120	3-1-05	Repeal	10-1-04
137-003-0670	1-1-04	Amend	1-1-04	137-030-0125	3-1-05	Repeal	10-1-04
137-003-0675	1-1-04	Amend	1-1-04	137-030-0130	3-1-05	Repeal	10-1-04
137-003-0690	1-1-04	Amend	1-1-04	137-030-0135	3-1-05	Repeal	10-1-04
137-003-0695	1-1-04	Amend	1-1-04	137-030-0140	3-1-05	Repeal	10-1-04
137-004-0800	12-9-03	Amend	1-1-04	137-030-0145	3-1-05	Repeal	10-1-04
137-008-0000	12-9-03	Amend	1-1-04	137-030-0155	3-1-05	Repeal	10-1-04
137-008-0010	12-9-03	Amend	1-1-04	137-035-0000	3-1-05	Repeal	10-1-04
137-008-0010	12-10-03	Amend(T)	1-1-04	137-035-0010	3-1-05	Repeal	10-1-04
137-008-0010	11-1-04	Amend(T)	12-1-04	137-035-0020	3-1-05	Repeal	10-1-04
137-025-0020	4-1-04	Amend	4-1-04	137-035-0030	3-1-05	Repeal	10-1-04
137-025-0020	5-19-04	Amend	7-1-04	137-035-0040	3-1-05	Repeal	10-1-04
137-025-0045	5-19-04	Adopt	7-1-04	137-035-0050	3-1-05	Repeal	10-1-04
137-025-0115	5-19-04	Adopt	7-1-04	137-035-0060	3-1-05	Repeal	10-1-04
137-025-0117	5-19-04	Adopt	7-1-04	137-035-0065	3-1-05	Repeal	10-1-04
137-025-0160	4-1-04	Amend	4-1-04	137-035-0070	3-1-05	Repeal	10-1-04
137-025-0160	5-19-04	Amend	7-1-04	137-035-0080	3-1-05	Repeal	10-1-04
137-025-0180	4-1-04	Amend	4-1-04	137-040-0000	3-1-05	Repeal	10-1-04
137-025-0180	5-19-04	Amend	7-1-04	137-040-0005	3-1-05	Repeal	10-1-04
137-025-0181	5-19-04	Adopt	7-1-04	137-040-0010	3-1-05	Repeal	10-1-04
137-025-0182	5-19-04	Adopt	7-1-04	137-040-0015	3-1-05	Repeal	10-1-04
137-025-0183	5-19-04	Adopt	7-1-04	137-040-0017	1-2-04	Amend	2-1-04
137-025-0184	5-19-04	Adopt	7-1-04	137-040-0017	3-1-05	Repeal	10-1-04
137-025-0186	5-19-04	Adopt	7-1-04	137-040-0020	3-1-05	Repeal	10-1-04
137-025-0188	5-19-04	Adopt	7-1-04	137-040-0021	3-1-05	Repeal	10-1-04
137-025-0189	5-19-04	Adopt	7-1-04	137-040-0025	3-1-05	Repeal	10-1-04
137-030-0000	3-1-05	Repeal	10-1-04	137-040-0030	3-1-05	Repeal	10-1-04
137-030-0005	3-1-05	Repeal	10-1-04	137-040-0031	3-1-05	Repeal	10-1-04
137-030-0006	3-1-05	Repeal	10-1-04	137-040-0035	3-1-05	Repeal	10-1-04
137-030-0008	3-1-05	Repeal	10-1-04	137-040-0045	3-1-05	Repeal	10-1-04
137-030-0010	3-1-05	Repeal	10-1-04	137-040-0500	1-2-04	Amend	2-1-04
137-030-0011	3-1-05	Repeal	10-1-04	137-040-0500	3-1-05	Repeal	10-1-04
137-030-0012	3-1-05	Repeal	10-1-04	137-040-0510	1-2-04	Amend	2-1-04
137-030-0013	3-1-05	Repeal	10-1-04	137-040-0510	3-1-05	Repeal	10-1-04
137-030-0014	3-1-05	Repeal	10-1-04	137-040-0520	1-2-04	Amend	2-1-04
137-030-0015	3-1-05	Repeal	10-1-04	137-040-0520	3-1-05	Repeal	10-1-04
137-030-0020	3-1-05	Repeal	10-1-04	137-040-0530	3-1-05	Repeal	10-1-04
137-030-0030	3-1-05	Repeal	10-1-04	137-040-0540	3-1-05	Repeal	10-1-04
137-030-0035	3-1-05	Repeal	10-1-04	137-040-0550	1-2-04	Amend	2-1-04
137-030-0040	3-1-05	Repeal	10-1-04	137-040-0550	3-1-05	Repeal	10-1-04
137-030-0050	3-1-05	Repeal	10-1-04	137-040-0560	1-2-04	Amend	2-1-04
137-030-0055	3-1-05	Repeal	10-1-04	137-040-0560	3-1-05	Repeal	10-1-04
137-030-0060	3-1-05	Repeal	10-1-04	137-040-0565	1-2-04	Adopt	2-1-04
137-030-0065	3-1-05	Repeal	10-1-04	137-040-0565	3-1-05	Repeal	10-1-04
137-030-0070	3-1-05	Repeal	10-1-04	137-040-0570	3-1-05	Repeal	10-1-04
137-030-0075	3-1-05	Repeal	10-1-04	137-040-0590	3-1-05	Repeal	10-1-04
137-030-0080	3-1-05	Repeal	10-1-04	137-045-0010	12-9-03	Amend	1-1-04
137-030-0085	3-1-05	Repeal	10-1-04	137-045-0015	12-9-03	Amend	1-1-04
137-030-0090	3-1-05	Repeal	10-1-04	137-045-0030	12-9-03	Amend	1-1-04
137-030-0095	3-1-05	Repeal	10-1-04	137-045-0035	12-9-03	Amend	1-1-04
137-030-0100	3-1-05	Repeal	10-1-04	137-045-0050	12-9-03	Amend	1-1-04
137-030-0102	3-1-05	Repeal	10-1-04	137-045-0055	12-9-03	Adopt	1-1-04
137-030-0104	3-1-05	Repeal	10-1-04	137-045-0060	12-9-03	Amend	1-1-04
137-030-0105	3-1-05	Repeal	10-1-04	137-045-0070	12-9-03	Amend	1-1-04

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137-045-0090	12-9-03	Amend	1-1-04	137-047-0630	3-1-05	Adopt	10-1-04
137-046-0100	3-1-05	Adopt	10-1-04	137-047-0640	3-1-05	Adopt	10-1-04
137-046-0110	3-1-05	Adopt	10-1-04	137-047-0650	3-1-05	Adopt	10-1-04
137-046-0120	3-1-05	Adopt	10-1-04	137-047-0660	3-1-05	Adopt	10-1-04
137-046-0130	3-1-05	Adopt	10-1-04	137-047-0670	3-1-05	Adopt	10-1-04
137-046-0200	3-1-05	Adopt	10-1-04	137-047-0700	3-1-05	Adopt	10-1-04
137-046-0210	3-1-05	Adopt	10-1-04	137-047-0710	3-1-05	Adopt	10-1-04
137-046-0300	3-1-05	Adopt	10-1-04	137-047-0720	3-1-05	Adopt	10-1-04
137-046-0310	3-1-05	Adopt	10-1-04	137-047-0730	3-1-05	Adopt	10-1-04
137-046-0320	3-1-05	Adopt	10-1-04	137-047-0740	3-1-05	Adopt	10-1-04
137-046-0400	3-1-05	Adopt	10-1-04	137-047-0745	3-1-05	Adopt	10-1-04
137-046-0410	3-1-05	Adopt	10-1-04	137-047-0750	3-1-05	Adopt	10-1-04
137-046-0420	3-1-05	Adopt	10-1-04	137-047-0760	3-1-05	Adopt	10-1-04
137-046-0430	3-1-05	Adopt	10-1-04	137-047-0800	3-1-05	Adopt	10-1-04
137-046-0440	3-1-05	Adopt	10-1-04	137-048-0100	3-1-05	Adopt	10-1-04
137-046-0450	3-1-05	Adopt	10-1-04	137-048-0110	3-1-05	Adopt	10-1-04
137-046-0460	3-1-05	Adopt	10-1-04	137-048-0120	3-1-05	Adopt	10-1-04
137-046-0470	3-1-05	Adopt	10-1-04	137-048-0130	3-1-05	Adopt	10-1-04
137-046-0480	3-1-05	Adopt	10-1-04	137-048-0200	3-1-05	Adopt	10-1-04
137-046-0500	3-1-05	Adopt	10-1-04	137-048-0210	3-1-05	Adopt	10-1-04
137-047-0000	3-1-05	Adopt	10-1-04	137-048-0220	3-1-05	Adopt	10-1-04
137-047-0100	3-1-05	Adopt	10-1-04	137-048-0230	3-1-05	Adopt	10-1-04
137-047-0250	3-1-05	Adopt	10-1-04	137-048-0240	3-1-05	Adopt	10-1-04
137-047-0255	3-1-05	Adopt	10-1-04	137-048-0250	3-1-05	Adopt	10-1-04
137-047-0257	3-1-05	Adopt	10-1-04	137-048-0260	3-1-05	Adopt	10-1-04
137-047-0260	3-1-05	Adopt	10-1-04	137-048-0300	3-1-05	Adopt	10-1-04
137-047-0261	3-1-05	Adopt	10-1-04	137-048-0310	3-1-05	Adopt	10-1-04
137-047-0262	3-1-05	Adopt	10-1-04	137-048-0320	3-1-05	Adopt	10-1-04
137-047-0263	3-1-05	Adopt	10-1-04	137-049-0100	3-1-05	Adopt	10-1-04
137-047-0265	3-1-05	Adopt	10-1-04	137-049-0110	3-1-05	Adopt	10-1-04
137-047-0270	3-1-05	Adopt	10-1-04	137-049-0120	3-1-05	Adopt	10-1-04
137-047-0275	3-1-05	Adopt	10-1-04	137-049-0130	3-1-05	Adopt	10-1-04
137-047-0280	3-1-05	Adopt	10-1-04	137-049-0140	3-1-05	Adopt	10-1-04
137-047-0285	3-1-05	Adopt	10-1-04	137-049-0150	3-1-05	Adopt	10-1-04
137-047-0290	3-1-05	Adopt	10-1-04	137-049-0160	3-1-05	Adopt	10-1-04
137-047-0300	3-1-05	Adopt	10-1-04	137-049-0200	3-1-05	Adopt	10-1-04
137-047-0310	3-1-05	Adopt	10-1-04	137-049-0210	3-1-05	Adopt	10-1-04
137-047-0320	3-1-05	Adopt	10-1-04	137-049-0220	3-1-05	Adopt	10-1-04
137-047-0330	3-1-05	Adopt	10-1-04	137-049-0230	3-1-05	Adopt	10-1-04
137-047-0400	3-1-05	Adopt	10-1-04	137-049-0240	3-1-05	Adopt	10-1-04
137-047-0410	3-1-05	Adopt	10-1-04	137-049-0250	3-1-05	Adopt	10-1-04
137-047-0420	3-1-05	Adopt	10-1-04	137-049-0260	3-1-05	Adopt	10-1-04
137-047-0430	3-1-05	Adopt	10-1-04	137-049-0270	3-1-05	Adopt	10-1-04
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137-047-0500	3-1-05	Adopt	10-1-04	137-049-0340	3-1-05	Adopt	10-1-04
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137-047-0600	3-1-05	Adopt	10-1-04	137-049-0380	3-1-05	Adopt	10-1-04
137-047-0610	3-1-05	Adopt	10-1-04	137-049-0390	3-1-05	Adopt	10-1-04

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137-049-0410	3-1-05	Adopt	10-1-04	137-055-3420	1-5-04	Amend	2-1-04
137-049-0420	3-1-05	Adopt	10-1-04	137-055-3420	7-1-04	Amend	8-1-04
137-049-0430	3-1-05	Adopt	10-1-04	137-055-3430	7-1-04	Adopt	8-1-04
137-049-0440	3-1-05	Adopt	10-1-04	137-055-3440	1-5-04	Amend	2-1-04
137-049-0450	3-1-05	Adopt	10-1-04	137-055-3440	10-1-04	Amend	11-1-04
137-049-0460	3-1-05	Adopt	10-1-04	137-055-3480	4-1-04	Amend	5-1-04
137-049-0470	3-1-05	Adopt	10-1-04	137-055-3485	7-1-04	Adopt	8-1-04
137-049-0490	3-1-05	Adopt	10-1-04	137-055-3490	1-5-04	Amend	2-1-04
137-049-0600	3-1-05	Adopt	10-1-04	137-055-3660	1-5-04	Adopt	2-1-04
137-049-0610	3-1-05	Adopt	10-1-04	137-055-3665	10-1-04	Adopt	11-1-04
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137-049-0630	3-1-05	Adopt	10-1-04	137-055-4080	1-5-04	Amend	2-1-04
137-049-0640	3-1-05	Adopt	10-1-04	137-055-4100	1-5-04	Amend	2-1-04
137-049-0650	3-1-05	Adopt	10-1-04	137-055-4110	1-5-04	Adopt	2-1-04
137-049-0660	3-1-05	Adopt	10-1-04	137-055-4120	1-5-04	Amend	2-1-04
137-049-0670	3-1-05	Adopt	10-1-04	137-055-4120	7-1-04	Amend	8-1-04
137-049-0680	3-1-05	Adopt	10-1-04	137-055-4120	10-1-04	Amend	11-1-04
137-049-0690	3-1-05	Adopt	10-1-04	137-055-4130	1-5-04	Amend	2-1-04
137-049-0800	3-1-05	Adopt	10-1-04	137-055-4140	1-5-04	Repeal	2-1-04
137-049-0810	3-1-05	Adopt	10-1-04	137-055-4160	1-5-04	Amend	2-1-04
137-049-0820	3-1-05	Adopt	10-1-04	137-055-4180	1-5-04	Amend	2-1-04
137-049-0830	3-1-05	Adopt	10-1-04	137-055-4200	1-5-04	Repeal	2-1-04
137-049-0840	3-1-05	Adopt	10-1-04	137-055-4220	1-5-04	Repeal	2-1-04
137-049-0850	3-1-05	Adopt	10-1-04	137-055-4240	1-5-04	Repeal	2-1-04
137-049-0860	3-1-05	Adopt	10-1-04	137-055-4260	1-5-04	Repeal	2-1-04
137-049-0870	3-1-05	Adopt	10-1-04	137-055-4280	1-5-04	Repeal	2-1-04
137-049-0880	3-1-05	Adopt	10-1-04	137-055-4440	1-5-04	Amend	2-1-04
137-049-0890	3-1-05	Adopt	10-1-04	137-055-4450	1-5-04	Adopt	2-1-04
137-049-0900	3-1-05	Adopt	10-1-04	137-055-4520	1-5-04	Amend	2-1-04
137-049-0910	3-1-05	Adopt	10-1-04	137-055-4560	10-1-04	Amend	11-1-04
137-055-1020	1-5-04	Amend	2-1-04	137-055-5020	1-5-04	Amend	2-1-04
137-055-1060	10-1-04	Amend	11-1-04	137-055-5025	1-5-04	Adopt	2-1-04
137-055-1070	7-1-04	Amend	8-1-04	137-055-5030	7-1-04	Adopt	8-1-04
137-055-1140	4-1-04	Amend	5-1-04	137-055-5040	1-5-04	Amend	2-1-04
137-055-1140	10-1-04	Amend	11-1-04	137-055-5040	7-1-04	Amend	8-1-04
137-055-1145	10-1-04	Adopt	11-1-04	137-055-5045	7-1-04	Adopt	8-1-04
137-055-1160	1-5-04	Amend	2-1-04	137-055-5110	1-5-04	Amend	2-1-04
137-055-1160	10-1-04	Amend	11-1-04	137-055-5110	7-1-04	Amend	8-1-04
137-055-1180	7-1-04	Amend	8-1-04	137-055-5120	10-1-04	Amend	11-1-04
137-055-1320	4-1-04	Amend	5-1-04	137-055-5220	1-5-04	Amend	2-1-04
137-055-1340	4-1-04	Repeal	5-1-04	137-055-5220	10-1-04	Amend	11-1-04
137-055-1360	4-1-04	Amend	5-1-04	137-055-5510	1-5-04	Adopt	2-1-04
137-055-1360	10-1-04	Amend	11-1-04	137-055-5510	7-1-04	Amend	8-1-04
137-055-1600	4-1-04	Amend	5-1-04	137-055-6020	1-5-04	Amend	2-1-04
137-055-2040	7-1-04	Amend	8-1-04	137-055-6020	7-1-04	Amend	8-1-04
137-055-2140	4-1-04	Amend	5-1-04	137-055-6020	10-1-04	Amend	11-1-04
137-055-3060	10-1-04	Amend	11-1-04	137-055-6025	1-5-04	Amend	2-1-04
137-055-3200	1-5-04	Adopt	2-1-04	137-055-6110	1-5-04	Amend	2-1-04
137-055-3200	10-1-04	Amend	11-1-04	137-055-6210	7-1-04	Adopt	8-1-04
137-055-3220	1-5-04	Amend	2-1-04	137-055-6220	7-1-04	Amend	8-1-04
137-055-3300	4-1-04	Amend	5-1-04	137-055-7180	7-1-04	Amend	8-1-04
137-055-3300	10-1-04	Amend	11-1-04	137-055-7190	7-1-04	Adopt	8-1-04
137-055-3360	1-5-04	Amend	2-1-04	137-060-0010	2-11-04	Repeal	3-1-04
137-055-3360	10-1-04	Amend	11-1-04	137-060-0011	2-11-04	Repeal	3-1-04
137-055-3400	1-5-04	Amend	2-1-04	137-060-0012	2-11-04	Repeal	3-1-04

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137-060-0014	2-11-04	Repeal	3-1-04	137-085-0010	2-1-04	Adopt(T)	3-1-04
137-060-0015	2-11-04	Repeal	3-1-04	137-085-0020	2-1-04	Adopt(T)	3-1-04
137-060-0016	2-11-04	Repeal	3-1-04	137-085-0030	2-1-04	Adopt(T)	3-1-04
137-060-0020	2-11-04	Repeal	3-1-04	137-085-0040	2-1-04	Adopt(T)	3-1-04
137-060-0021	2-11-04	Repeal	3-1-04	137-085-0050	2-1-04	Adopt(T)	3-1-04
137-060-0022	2-11-04	Repeal	3-1-04	137-105-0001	5-25-04	Adopt	7-1-04
137-060-0023	2-11-04	Repeal	3-1-04	137-105-0010	5-25-04	Adopt	7-1-04
137-060-0024	2-11-04	Repeal	3-1-04	137-105-0020	5-25-04	Adopt	7-1-04
137-060-0025	2-11-04	Repeal	3-1-04	137-105-0030	5-25-04	Adopt	7-1-04
137-060-0026	2-11-04	Repeal	3-1-04	137-105-0040	5-25-04	Adopt	7-1-04
137-060-0030	2-11-04	Repeal	3-1-04	141-030-0010	1-1-04	Amend	1-1-04
137-060-0031	2-11-04	Repeal	3-1-04	141-030-0015	1-1-04	Amend	1-1-04
137-060-0032	2-11-04	Repeal	3-1-04	141-030-0025	1-1-04	Amend	1-1-04
137-060-0033	2-11-04	Repeal	3-1-04	141-030-0034	1-1-04	Amend	1-1-04
137-060-0034	2-11-04	Repeal	3-1-04	141-030-0035	1-1-04	Amend	1-1-04
137-060-0035	2-11-04	Repeal	3-1-04	141-030-0036	1-1-04	Amend	1-1-04
137-060-0036	2-11-04	Repeal	3-1-04	141-030-0037	1-1-04	Amend	1-1-04
137-060-0040	2-11-04	Repeal	3-1-04	141-030-0038	1-1-04	Repeal	1-1-04
137-060-0041	2-11-04	Repeal	3-1-04	141-030-0039	1-1-04	Am. & Ren.	1-1-04
137-060-0042	2-11-04	Repeal	3-1-04	141-030-0039	1-1-04	Amend	1-1-04
137-060-0043	2-11-04	Repeal	3-1-04	141-030-0040	1-1-04	Repeal	1-1-04
137-060-0044	2-11-04	Repeal	3-1-04	141-030-0045	1-1-04	Adopt	1-1-04
137-060-0045	2-11-04	Repeal	3-1-04	141-035-0005	1-1-04	Amend	1-1-04
137-060-0100	2-11-04	Adopt	3-1-04	141-035-0010	1-1-04	Repeal	1-1-04
137-060-0110	2-11-04	Adopt	3-1-04	141-035-0011	1-1-04	Adopt	1-1-04
137-060-0120	2-11-04	Adopt	3-1-04	141-035-0012	1-1-04	Adopt	1-1-04
137-060-0130	2-11-04	Adopt	3-1-04	141-035-0013	1-1-04	Amend	1-1-04
137-060-0140	2-11-04	Adopt	3-1-04	141-035-0015	1-1-04	Amend	1-1-04
137-060-0150	2-11-04	Adopt	3-1-04	141-035-0016	1-1-04	Adopt	1-1-04
137-060-0160	2-11-04	Adopt	3-1-04	141-035-0018	1-1-04	Adopt	1-1-04
137-060-0200	2-11-04	Adopt	3-1-04	141-035-0020	1-1-04	Amend	1-1-04
137-060-0210	2-11-04	Adopt	3-1-04	141-035-0025	1-1-04	Amend	1-1-04
137-060-0220	2-11-04	Adopt	3-1-04	141-035-0030	1-1-04	Amend	1-1-04
137-060-0230	2-11-04	Adopt	3-1-04	141-035-0035	1-1-04	Amend	1-1-04
137-060-0240	2-11-04	Adopt	3-1-04	141-035-0040	1-1-04	Amend	1-1-04
137-060-0250	2-11-04	Adopt	3-1-04	141-035-0045	1-1-04	Amend	1-1-04
137-060-0260	2-11-04	Adopt	3-1-04	141-035-0047	1-1-04	Amend	1-1-04
137-060-0300	2-11-04	Adopt	3-1-04	141-035-0048	1-1-04	Amend	1-1-04
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

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141-045-0005	1-1-04	Amend	1-1-04	141-085-0070	5-21-04	Amend	7-1-04
141-045-0010	1-1-04	Amend	1-1-04	141-085-0075	11-26-03	Amend	1-1-04
141-045-0015	1-1-04	Amend	1-1-04	141-085-0075	5-21-04	Amend	7-1-04
141-045-0021	1-1-04	Amend	1-1-04	141-085-0079	5-21-04	Amend	7-1-04
141-045-0031	1-1-04	Amend	1-1-04	141-085-0080	5-21-04	Amend	7-1-04
141-045-0041	1-1-04	Amend	1-1-04	141-085-0085	5-21-04	Amend	7-1-04
141-045-0061	1-1-04	Amend	1-1-04	141-085-0090	5-21-04	Amend	7-1-04
141-045-0100	1-1-04	Amend	1-1-04	141-085-0095	5-21-04	Amend	7-1-04
141-045-0105	1-1-04	Amend	1-1-04	141-085-0096	11-26-03	Amend	1-1-04
141-045-0115	1-1-04	Amend	1-1-04	141-085-0096	5-21-04	Amend	7-1-04
141-045-0120	1-1-04	Amend	1-1-04	141-085-0115	11-26-03	Amend	1-1-04
141-045-0121	1-1-04	Amend	1-1-04	141-085-0115	5-21-04	Amend	7-1-04
141-045-0122	1-1-04	Amend	1-1-04	141-085-0121	11-26-03	Amend	1-1-04
141-045-0123	1-1-04	Amend	1-1-04	141-085-0121	5-21-04	Amend	7-1-04
141-045-0124	1-1-04	Amend	1-1-04	141-085-0126	11-26-03	Amend	1-1-04
141-045-0125	1-1-04	Amend	1-1-04	141-085-0126	5-21-04	Amend	7-1-04
141-045-0126	1-1-04	Amend	1-1-04	141-085-0131	11-26-03	Amend	1-1-04
141-045-0130	1-1-04	Amend	1-1-04	141-085-0131	5-21-04	Amend	7-1-04
141-045-0150	1-1-04	Amend	1-1-04	141-085-0136	5-21-04	Amend	7-1-04
141-045-0155	1-1-04	Amend	1-1-04	141-085-0141	11-26-03	Amend	1-1-04
141-045-0160	1-1-04	Amend	1-1-04	141-085-0141	5-21-04	Amend	7-1-04
141-045-0170	1-1-04	Amend	1-1-04	141-085-0146	11-26-03	Amend	1-1-04
141-045-0180	1-1-04	Amend	1-1-04	141-085-0146	5-21-04	Amend	7-1-04
141-045-0185	1-1-04	Amend	1-1-04	141-085-0151	11-26-03	Amend	1-1-04
141-084-0010	6-11-04	Repeal	7-1-04	141-085-0151	5-21-04	Amend	7-1-04
141-084-0020	6-11-04	Repeal	7-1-04	141-085-0156	11-26-03	Amend	1-1-04
141-084-0030	6-11-04	Repeal	7-1-04	141-085-0156	5-21-04	Amend	7-1-04
141-084-0040	6-11-04	Repeal	7-1-04	141-085-0161	11-26-03	Amend	1-1-04
141-084-0050	6-11-04	Repeal	7-1-04	141-085-0161	5-21-04	Amend	7-1-04
141-084-0060	6-11-04	Repeal	7-1-04	141-085-0166	5-21-04	Amend	7-1-04
141-084-0070	6-11-04	Repeal	7-1-04	141-085-0171	5-21-04	Amend	7-1-04
141-084-0080	6-11-04	Repeal	7-1-04	141-085-0176	11-26-03	Amend	1-1-04
141-084-0090	6-11-04	Repeal	7-1-04	141-085-0176	5-21-04	Amend	7-1-04
141-084-0100	6-11-04	Repeal	7-1-04	141-085-0240	5-21-04	Amend	7-1-04
141-085-0005	5-21-04	Amend	7-1-04	141-085-0244	5-21-04	Amend	7-1-04
141-085-0006	5-21-04	Amend	7-1-04	141-085-0248	5-21-04	Amend	7-1-04
141-085-0010	11-26-03	Amend	1-1-04	141-085-0254	5-21-04	Amend	7-1-04
141-085-0010	5-21-04	Amend	7-1-04	141-085-0256	5-21-04	Amend	7-1-04
141-085-0015	5-21-04	Amend	7-1-04	141-085-0257	5-21-04	Amend	7-1-04
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

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141-085-0450	5-21-04	Adopt	7-1-04	141-089-0290	5-21-04	Amend	7-1-04
141-085-0640	5-21-04	Amend	7-1-04	141-089-0295	5-21-04	Amend	7-1-04
141-085-0650	5-21-04	Amend	7-1-04	141-089-0300	5-21-04	Amend	7-1-04
141-085-0660	5-21-04	Amend	7-1-04	141-089-0310	5-21-04	Amend	7-1-04
141-088-0000	6-11-04	Amend	7-1-04	141-089-0400	5-21-04	Amend	7-1-04
141-088-0010	6-11-04	Amend	7-1-04	141-089-0405	5-21-04	Amend	7-1-04
141-088-0020	6-11-04	Amend	7-1-04	141-089-0410	5-21-04	Amend	7-1-04
141-088-0035	6-11-04	Adopt	7-1-04	141-089-0415	5-21-04	Amend	7-1-04
141-088-0040	6-11-04	Adopt	7-1-04	141-089-0420	5-21-04	Amend	7-1-04
141-088-0050	6-11-04	Adopt	7-1-04	141-089-0430	5-21-04	Amend	7-1-04
141-088-0060	6-11-04	Adopt	7-1-04	141-089-0500	5-21-04	Amend	7-1-04
141-088-0070	6-11-04	Adopt	7-1-04	141-089-0505	5-21-04	Amend	7-1-04
141-088-0080	6-11-04	Adopt	7-1-04	141-089-0510	5-21-04	Amend	7-1-04
141-088-0090	6-11-04	Adopt	7-1-04	141-089-0515	5-21-04	Amend	7-1-04
141-088-0100	6-11-04	Adopt	7-1-04	141-089-0520	5-21-04	Amend	7-1-04
141-088-0110	6-11-04	Adopt	7-1-04	141-089-0530	5-21-04	Amend	7-1-04
141-088-0120	6-11-04	Adopt	7-1-04	141-089-0550	5-21-04	Adopt	7-1-04
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141-089-0115	5-21-04	Amend	7-1-04	141-089-0600	5-21-04	Adopt	7-1-04
141-089-0120	5-21-04	Amend	7-1-04	141-089-0605	5-21-04	Adopt	7-1-04
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141-089-0135	5-21-04	Amend	7-1-04	141-089-0615	5-21-04	Adopt	7-1-04
141-089-0140	5-21-04	Amend	7-1-04	141-090-0005	5-21-04	Amend	7-1-04
141-089-0145	5-21-04	Amend	7-1-04	141-090-0010	5-21-04	Amend	7-1-04
141-089-0150	5-21-04	Amend	7-1-04	141-090-0015	5-21-04	Amend	7-1-04
141-089-0155	5-21-04	Amend	7-1-04	141-090-0020	11-26-03	Amend	1-1-04
141-089-0165	5-21-04	Amend	7-1-04	141-090-0020	5-21-04	Amend	7-1-04
141-089-0170	5-21-04	Amend	7-1-04	141-090-0025	5-21-04	Amend	7-1-04
141-089-0175	5-21-04	Amend	7-1-04	141-090-0030	11-26-03	Amend	1-1-04
141-089-0180	11-26-03	Amend	1-1-04	141-090-0030	5-21-04	Amend	7-1-04
141-089-0180	5-21-04	Amend	7-1-04	141-090-0035	5-21-04	Amend	7-1-04
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
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141-089-0210	5-21-04	Amend	7-1-04	141-102-0000	5-21-04	Amend	7-1-04
141-089-0215	5-21-04	Amend	7-1-04	141-102-0010	5-21-04	Amend	7-1-04
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(2)	7-31-04	Adopt	9-1-04
141-089-0260	5-21-04	Amend	7-1-04	150-118.010(2)(T)	7-31-04	Repeal	9-1-04
141-089-0265	5-21-04	Amend	7-1-04	150-118.010(7)	5-1-04	Adopt(T)	6-1-04
141-089-0275	5-21-04	Amend	7-1-04	150-118.010(7)	7-31-04	Adopt	9-1-04
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150-137.302(7)	7-31-04	Adopt	9-1-04	150-316.054	12-31-03	Amend	2-1-04
150-180.455	4-1-04	Adopt(T)	5-1-04	150-316.127-(D)	12-31-03	Amend	2-1-04
150-180.455	7-31-04	Adopt	9-1-04	150-316.272	5-1-04	Adopt(T)	6-1-04
150-180.455(T)	7-31-04	Repeal	9-1-04	150-316.272	7-31-04	Adopt	9-1-04
150-183.341(2)	7-31-04	Amend	9-1-04	150-316.272(T)	7-31-04	Repeal	9-1-04
150-183.341(4)	7-31-04	Adopt	9-1-04	150-316.282(4)	7-31-04	Adopt	9-1-04
150-183.390	7-31-04	Repeal	9-1-04	150-316.369	7-31-04	Amend	9-1-04
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150-294.175(2)-(B)	12-31-03	Adopt	2-1-04	150-317.013	7-31-04	Amend	9-1-04
150-294.187	12-31-03	Amend	2-1-04	150-317.018	7-31-04	Amend	9-1-04
150-294.211(26)	12-31-03	Renumber	2-1-04	150-320.305	6-25-04	Adopt	8-1-04
150-294.311(30)	7-31-04	Amend	9-1-04	150-321.005	12-31-03	Amend	2-1-04
150-294.352(8)	7-31-04	Amend	9-1-04	150-321.045	12-31-03	Amend	2-1-04
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150-305.220(2)	12-31-03	Amend	2-1-04	150-321.267	7-31-04	Repeal	9-1-04
150-306.115	12-31-03	Amend	2-1-04	150-321.282(1)-(B)	7-31-04	Repeal	9-1-04
150-308.156(5)-(B)	12-31-03	Amend	2-1-04	150-321.282(1)-(C)	12-31-03	Repeal	2-1-04
150-308.159	12-31-03	Adopt	2-1-04	150-321.282(1)-(D)	12-31-03	Repeal	2-1-04
150-308.219	12-31-03	Amend	2-1-04	150-321.282(1)-(E)	12-31-03	Repeal	2-1-04
150-308.250	12-31-03	Amend	2-1-04	150-321.282(1)-(I)	12-31-03	Repeal	2-1-04
150-309.026(2)	7-31-04	Renumber	9-1-04	150-321.282(2)(a)	12-31-03	Repeal	2-1-04
150-309.100(3)-(B)	12-31-03	Amend	2-1-04	150-321.282(2)(c)	12-31-03	Repeal	2-1-04
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150-309.110(1)-(B)	12-31-03	Amend	2-1-04	150-321.282(5)	12-31-03	Repeal	2-1-04
150-309.110(1)-(D)	12-31-03	Adopt	2-1-04	150-321.282(6)	7-31-04	Repeal	9-1-04
150-309.110(1)-(E)	12-31-03	Adopt	2-1-04	150-321.282(6)(a)-(A)	12-31-03	Am. & Ren.	2-1-04
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150-311.205(1)(c)-(A)	12-31-03	Renumber	2-1-04	150-321.282(6)(b)-(B)	7-31-04	Repeal	9-1-04
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150-311.806-(A)	12-31-03	Amend	2-1-04	150-321.322(1)	7-31-04	Repeal	9-1-04
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150-314.415(1)(c)	12-31-03	Am. & Ren.	2-1-04	150-321.358(4)	12-31-03	Am. & Ren.	2-1-04
150-314.505-(A)	12-31-03	Amend	2-1-04	150-321.379(1)-(A)	12-31-03	Repeal	2-1-04
150-314.610(1)-(A)	12-31-03	Amend	2-1-04	150-321.379(1)-(B)	12-31-03	Repeal	2-1-04
150-314.610(1)-(B)	12-31-03	Amend	2-1-04	150-321.379(2)-(A)	12-31-03	Repeal	2-1-04
150-314.610(1)-(C)	12-31-03	Amend	2-1-04	150-321.379(2)-(C)	12-31-03	Repeal	2-1-04
150-314.615-(F)	12-31-03	Amend	2-1-04	150-321.405	7-31-04	Repeal	9-1-04
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150-314.655(2)-(B)	12-31-03	Amend	2-1-04	150-321.405(8)	7-31-04	Repeal	9-1-04
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150-314.840	12-31-03	Amend	2-1-04	150-321.430(3)-(B)	12-31-03	Repeal	2-1-04
150-315.113	12-31-03	Adopt	2-1-04	150-321.430(3)-(C)	12-31-03	Repeal	2-1-04
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150-323.190	7-31-04	Amend	9-1-04	161-010-0080	6-1-04	Amend	7-1-04
150-323.220	7-31-04	Am. & Ren.	9-1-04	161-015-0030	11-24-03	Amend	1-1-04
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150-323.480(1)	7-31-04	Am. & Ren.	9-1-04	161-020-0055	11-24-03	Amend	1-1-04
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165-010-0110	6-11-04	Adopt	7-1-04	166-113-0025	9-1-04	Repeal	10-1-04
165-012-0005	12-12-03	Amend	1-1-04	166-113-0030	9-1-04	Repeal	10-1-04
165-012-0050	12-5-03	Amend	1-1-04	166-115-0010	7-29-04	Adopt	9-1-04
165-012-0060	12-5-03	Amend	1-1-04	166-115-0010	9-1-04	Repeal	10-1-04
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166-100-0010	9-1-04	Repeal	10-1-04	166-150-0090	9-1-04	Adopt	10-1-04
166-101-0010	11-24-03	Amend	1-1-04	166-150-0095	9-1-04	Adopt	10-1-04
166-101-0010	9-1-04	Repeal	10-1-04	166-150-0100	9-1-04	Adopt	10-1-04
166-101-0015	9-1-04	Repeal	10-1-04	166-150-0105	9-1-04	Adopt	10-1-04
166-101-0020	9-1-04	Repeal	10-1-04	166-150-0110	9-1-04	Adopt	10-1-04
166-103-0005	9-1-04	Repeal	10-1-04	166-150-0115	9-1-04	Adopt	10-1-04
166-103-0010	9-1-04	Repeal	10-1-04	166-150-0120	9-1-04	Adopt	10-1-04
166-103-0015	9-1-04	Repeal	10-1-04	166-150-0125	9-1-04	Adopt	10-1-04
166-103-0020	9-1-04	Repeal	10-1-04	166-150-0130	9-1-04	Adopt	10-1-04
166-103-0025	9-1-04	Repeal	10-1-04	166-150-0135	11-15-04	Adopt	12-1-04
166-103-0030	9-1-04	Repeal	10-1-04	166-150-0140	9-1-04	Adopt	10-1-04
166-103-0035	9-1-04	Repeal	10-1-04	166-150-0145	9-1-04	Adopt	10-1-04
166-103-0040	9-1-04	Repeal	10-1-04	166-150-0150	9-1-04	Adopt	10-1-04
166-103-0045	9-1-04	Repeal	10-1-04	166-150-0155	9-1-04	Adopt	10-1-04
166-105-0010	9-1-04	Repeal	10-1-04	166-150-0160	9-1-04	Adopt	10-1-04
166-107-0010	9-1-04	Repeal	10-1-04	166-150-0165	9-1-04	Adopt	10-1-04
166-108-0010	9-1-04	Repeal	10-1-04	166-150-0170	9-1-04	Adopt	10-1-04
166-109-0010	9-1-04	Repeal	10-1-04	166-150-0175	9-1-04	Adopt	10-1-04
166-110-0010	9-1-04	Repeal	10-1-04	166-150-0180	9-1-04	Adopt	10-1-04
166-111-0005	9-1-04	Repeal	10-1-04	166-150-0185	9-1-04	Adopt	10-1-04
166-111-0010	9-1-04	Repeal	10-1-04	166-150-0190	9-1-04	Adopt	10-1-04

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166-150-0200	9-1-04	Adopt	10-1-04	177-045-0000	5-26-04	Amend	7-1-04
166-150-0205	9-1-04	Adopt	10-1-04	177-045-0010	1-5-04	Amend(T)	2-1-04
166-150-0210	9-1-04	Adopt	10-1-04	177-045-0010	5-26-04	Amend	7-1-04
166-150-0215	9-1-04	Adopt	10-1-04	177-045-0020	1-5-04	Suspend	2-1-04
166-200-0130	11-24-03	Amend	1-1-04	177-045-0020	5-26-04	Repeal	7-1-04
166-475-0010	7-29-04	Amend	9-1-04	177-045-0030	1-5-04	Amend(T)	2-1-04
166-475-0015	7-29-04	Amend	9-1-04	177-045-0030	5-26-04	Amend	7-1-04
166-475-0020	7-29-04	Amend	9-1-04	177-045-0040	1-5-04	Amend(T)	2-1-04
166-475-0025	7-29-04	Amend	9-1-04	177-045-0040	5-26-04	Amend	7-1-04
166-475-0030	7-29-04	Amend	9-1-04	177-045-0050	1-5-04	Adopt(T)	2-1-04
166-475-0035	7-29-04	Amend	9-1-04	177-045-0050(T)	4-6-04	Suspend	5-1-04
166-475-0040	7-29-04	Amend	9-1-04	177-045-0060	1-5-04	Adopt(T)	2-1-04
166-475-0045	7-29-04	Amend	9-1-04	177-045-0060	4-6-04	Adopt(T)	5-1-04
166-475-0050	7-29-04	Amend	9-1-04	177-045-0060	5-26-04	Adopt	7-1-04
166-475-0055	7-29-04	Amend	9-1-04	177-045-0060(T)	4-6-04	Suspend	5-1-04
166-475-0060	3-31-04	Amend	5-1-04	177-045-0070	1-5-04	Adopt(T)	2-1-04
166-475-0065	7-29-04	Amend	9-1-04	177-045-0070(T)	4-6-04	Suspend	5-1-04
166-475-0070	7-29-04	Amend	9-1-04	177-045-0080	1-5-04	Adopt(T)	2-1-04
166-475-0075	7-29-04	Amend	9-1-04	177-045-0080	4-6-04	Adopt(T)	5-1-04
166-475-0080	7-29-04	Amend	9-1-04	177-045-0080	5-26-04	Adopt	7-1-04
166-475-0085	7-29-04	Amend	9-1-04	177-045-0080(T)	4-6-04	Suspend	5-1-04
166-475-0090	7-29-04	Amend	9-1-04	177-082-0100	12-19-03	Repeal	2-1-04
166-475-0095	7-29-04	Amend	9-1-04	177-090-0000	8-3-04	Amend	9-1-04
166-475-0100	7-29-04	Amend	9-1-04	177-090-0005	8-3-04	Amend	9-1-04
166-475-0105	7-29-04	Amend	9-1-04	177-090-0010	8-3-04	Amend	9-1-04
166-475-0110	7-29-04	Amend	9-1-04	177-090-0015	8-3-04	Amend	9-1-04
166-500-0000	11-20-03	Amend	1-1-04	177-090-0020	8-3-04	Amend	9-1-04
166-500-0005	11-1-04	Amend	12-1-04	177-090-0025	8-3-04	Amend	9-1-04
166-500-0015	11-20-03	Amend	1-1-04	177-090-0030	8-3-04	Repeal	9-1-04
166-500-0040	11-20-03	Amend	1-1-04	177-090-0035	8-3-04	Amend	9-1-04
166-500-0045	11-20-03	Amend	1-1-04	177-090-0040	8-3-04	Amend	9-1-04
166-500-0050	11-20-03	Amend	1-1-04	177-090-0045	8-3-04	Amend	9-1-04
166-500-0055	11-20-03	Amend	1-1-04	177-090-0050	8-3-04	Amend	9-1-04
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170-001-0000	6-23-04	Amend	8-1-04	177-090-0057	8-3-04	Adopt	9-1-04
170-002-0000	6-23-04	Amend	8-1-04	177-090-0060	8-3-04	Repeal	9-1-04
170-060-0000	6-23-04	Amend	8-1-04	177-091-0000	12-19-03	Adopt	2-1-04
170-060-1000	1-15-04	Adopt(T)	2-1-04	177-091-0010	12-19-03	Adopt	2-1-04
170-060-1010	7-13-04	Adopt(T)	8-1-04	177-091-0020	12-19-03	Adopt	2-1-04
170-062-0000	6-23-04	Amend	8-1-04	177-091-0030	12-19-03	Adopt	2-1-04
177-010-0003	4-6-04	Amend(T)	5-1-04	177-091-0040	12-19-03	Adopt	2-1-04
177-010-0003	5-26-04	Amend	7-1-04	177-091-0050	12-19-03	Adopt	2-1-04
177-040-0000	4-6-04	Amend(T)	5-1-04	177-091-0060	12-19-03	Adopt	2-1-04
177-040-0000	5-26-04	Amend	7-1-04	177-091-0070	12-19-03	Adopt	2-1-04
177-040-0003	4-6-04	Amend(T)	5-1-04	177-091-0080	12-19-03	Adopt	2-1-04
177-040-0003	5-26-04	Amend	7-1-04	177-091-0090	12-19-03	Adopt	2-1-04
177-040-0025	4-6-04	Amend(T)	5-1-04	177-091-0100	12-19-03	Adopt	2-1-04
177-040-0025	5-26-04	Amend	7-1-04	177-091-0110	12-19-03	Adopt	2-1-04
177-040-0026	6-27-04	Adopt	7-1-04	177-099-0050	2-23-04	Amend(T)	4-1-04
177-040-0026	6-27-04	Adopt(T)	5-1-04	177-099-0050	5-26-04	Amend	7-1-04
177-040-0050	4-6-04	Amend(T)	5-1-04	177-200-0070	7-1-04	Amend	8-1-04
177-040-0050	5-26-04	Amend	7-1-04	191-010-0000	8-1-04	Amend	8-1-04
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177-040-0052	5-26-04	Amend	7-1-04	199-010-0025	8-4-04	Amend	9-1-04
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199-010-0080	8-4-04	Amend	9-1-04	255-080-0005	6-14-04	Amend	7-1-04
199-010-0085	8-4-04	Amend	9-1-04	255-080-0005	9-3-04	Amend(T)	10-1-04
199-010-0095	8-4-04	Amend	9-1-04	255-080-0005	11-2-04	Amend	12-1-04
199-010-0100	8-4-04	Amend	9-1-04	255-080-0011	9-3-04	Amend(T)	10-1-04
213-001-0000	1-1-04	Amend	2-1-04	255-080-0011	11-2-04	Amend	12-1-04
213-001-0005	1-1-04	Amend	2-1-04	257-070-0005	7-15-04	Amend(T)	8-1-04
213-003-0001	1-1-04	Amend	2-1-04	257-070-0010	7-15-04	Amend(T)	8-1-04
213-005-0001	1-1-04	Amend	2-1-04	257-070-0015	7-15-04	Amend(T)	8-1-04
213-005-0004	1-1-04	Amend	2-1-04	257-070-0025	7-15-04	Amend(T)	8-1-04
213-005-0007	1-1-04	Amend	2-1-04	257-070-0040	7-15-04	Amend(T)	8-1-04
213-011-0003	1-1-04	Amend	2-1-04	259-008-0005	4-23-04	Amend	6-1-04
213-017-0001	1-1-04	Amend	2-1-04	259-008-0010	12-22-03	Amend	2-1-04
213-017-0002	1-1-04	Amend	2-1-04	259-008-0011	1-20-04	Amend	3-1-04
213-017-0003	1-1-04	Amend	2-1-04	259-008-0011	4-23-04	Amend	6-1-04
213-017-0004	1-1-04	Amend	2-1-04	259-008-0020	4-23-04	Amend	6-1-04
213-017-0005	1-1-04	Amend	2-1-04	259-008-0025	12-22-03	Amend	2-1-04
213-017-0006	1-1-04	Amend	2-1-04	259-008-0025	4-23-04	Amend	6-1-04
213-017-0007	1-1-04	Amend	2-1-04	259-008-0030	4-23-04	Amend	6-1-04
213-017-0008	1-1-04	Amend	2-1-04	259-008-0060	1-20-04	Amend	3-1-04
213-017-0009	1-1-04	Amend	2-1-04	259-008-0060	4-23-04	Amend	6-1-04
213-017-0010	1-1-04	Amend	2-1-04	259-008-0066	4-23-04	Amend	6-1-04
213-017-0011	1-1-04	Amend	2-1-04	259-008-0067	4-23-04	Amend	6-1-04
213-018-0038	1-1-04	Amend	2-1-04	259-008-0068	1-16-04	Adopt	3-1-04
213-018-0047	1-1-04	Adopt	2-1-04	259-008-0070	4-23-04	Amend	6-1-04
213-018-0048	1-1-04	Adopt	2-1-04	259-009-0005	4-23-04	Amend	6-1-04
213-018-0050	1-1-04	Amend	2-1-04	259-009-0010	4-23-04	Amend	6-1-04
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213-019-0007	1-1-04	Amend	2-1-04	259-009-0062	4-23-04	Amend	6-1-04
213-019-0008	1-1-04	Amend	2-1-04	259-009-0065	4-23-04	Adopt	6-1-04
213-019-0010	1-1-04	Amend	2-1-04	259-009-0067	4-23-04	Amend	6-1-04
213-019-0011	1-1-04	Amend	2-1-04	259-009-0087	4-23-04	Amend	6-1-04
250-010-0053	5-11-04	Adopt	6-1-04	259-012-0035	4-23-04	Amend	6-1-04
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250-019-0020	10-14-04	Amend	11-1-04	259-060-0020	4-23-04	Amend	6-1-04
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250-019-0040	10-14-04	Amend	11-1-04	274-001-0000	4-16-04	Amend	6-1-04
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250-019-0060	10-14-04	Amend	11-1-04	274-020-0341	1-22-04	Amend(T)	3-1-04
250-020-0033	7-15-04	Amend(T)	8-1-04	274-020-0341	3-26-04	Amend	5-1-04
250-020-0063	7-14-04	Amend	8-1-04	274-020-0341	4-8-04	Amend(T)	5-1-04
250-020-0082	7-14-04	Amend	8-1-04	274-020-0341	4-29-04	Amend(T)	6-1-04
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255-030-0025	5-14-04	Amend(T)	6-1-04	274-020-0341(T)	1-22-04	Suspend	3-1-04
255-030-0025	11-2-04	Amend	12-1-04	274-020-0341(T)	3-26-04	Repeal	5-1-04
255-030-0026	11-2-04	Adopt	12-1-04	274-020-0341(T)	4-29-04	Suspend	6-1-04
255-032-0015	4-15-04	Amend(T)	5-1-04	274-020-0341(T)	5-11-04	Suspend	6-1-04
255-032-0015	6-14-04	Amend	7-1-04	274-020-0341(T)	8-6-04	Suspend	9-1-04
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274-040-0015	12-31-03	Amend	2-1-04	291-061-0145	9-28-04	Amend	11-1-04
274-040-0015	8-25-04	Amend	10-1-04	291-061-0200	9-28-04	Amend	11-1-04
274-040-0015(T)	12-31-03	Repeal	2-1-04	291-062-0010	1-14-04	Suspend	2-1-04
274-040-0030	12-31-03	Amend	2-1-04	291-062-0010	7-12-04	Repeal	8-1-04
274-040-0030(T)	12-31-03	Repeal	2-1-04	291-062-0020	1-14-04	Suspend	2-1-04
291-001-0020	12-12-03	Amend	1-1-04	291-062-0020	7-12-04	Repeal	8-1-04
291-001-0025	12-12-03	Amend	1-1-04	291-062-0030	1-14-04	Suspend	2-1-04
291-001-0070	12-12-03	Repeal	1-1-04	291-062-0030	7-12-04	Repeal	8-1-04
291-013-0010	1-27-04	Amend(T)	3-1-04	291-062-0040	1-14-04	Suspend	2-1-04
291-013-0010	11-2-04	Amend	12-1-04	291-062-0040	7-12-04	Repeal	8-1-04
291-013-0055	11-2-04	Amend	12-1-04	291-062-0050	1-14-04	Suspend	2-1-04
291-013-0065	11-2-04	Amend	12-1-04	291-062-0050	7-12-04	Repeal	8-1-04
291-013-0070	11-2-04	Amend	12-1-04	291-062-0060	1-14-04	Suspend	2-1-04
291-013-0080	11-2-04	Amend	12-1-04	291-062-0060	7-12-04	Repeal	8-1-04
291-013-0090	11-2-04	Am. & Ren.	12-1-04	291-062-0070	1-14-04	Suspend	2-1-04
291-013-0100	1-27-04	Amend(T)	3-1-04	291-062-0070	7-12-04	Repeal	8-1-04
291-013-0100	11-2-04	Amend	12-1-04	291-062-0080	1-14-04	Suspend	2-1-04
291-013-0120	11-2-04	Amend	12-1-04	291-062-0080	7-12-04	Repeal	8-1-04
291-013-0130	11-2-04	Amend	12-1-04	291-062-0100	1-14-04	Adopt(T)	2-1-04
291-013-0140	11-2-04	Amend	12-1-04	291-062-0100	7-12-04	Adopt	8-1-04
291-013-0185	11-2-04	Amend	12-1-04	291-062-0110	1-14-04	Adopt(T)	2-1-04
291-013-0190	11-2-04	Amend	12-1-04	291-062-0110	7-12-04	Adopt	8-1-04
291-013-0195	11-2-04	Amend	12-1-04	291-062-0120	1-14-04	Adopt(T)	2-1-04
291-013-0205	11-2-04	Amend	12-1-04	291-062-0120	7-12-04	Adopt	8-1-04
291-013-0206	11-2-04	Adopt	12-1-04	291-062-0130	1-14-04	Adopt(T)	2-1-04
291-013-0215	1-27-04	Amend(T)	3-1-04	291-062-0130	7-12-04	Adopt	8-1-04
291-013-0215	11-2-04	Amend	12-1-04	291-062-0140	1-14-04	Adopt(T)	2-1-04
291-013-0225	11-2-04	Amend	12-1-04	291-062-0140	7-12-04	Adopt	8-1-04
291-013-0235	11-2-04	Amend	12-1-04	291-062-0150	1-14-04	Adopt(T)	2-1-04
291-015-0005	8-9-04	Repeal	9-1-04	291-062-0150	7-12-04	Adopt	8-1-04
291-015-0010	8-9-04	Repeal	9-1-04	291-062-0160	1-14-04	Adopt(T)	2-1-04
291-015-0012	8-9-04	Repeal	9-1-04	291-062-0160	7-12-04	Adopt	8-1-04
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291-015-0120	8-9-04	Adopt	9-1-04	291-086-0050	9-28-04	Amend(T)	11-1-04
291-015-0125	8-9-04	Adopt	9-1-04	291-086-0060	9-28-04	Adopt(T)	11-1-04
291-015-0130	8-9-04	Adopt	9-1-04	291-113-0010	10-21-04	Amend	12-1-04
291-015-0135	8-9-04	Adopt	9-1-04	291-117-0005	7-19-04	Amend	9-1-04
291-015-0140	8-9-04	Adopt	9-1-04	291-117-0008	7-19-04	Amend	9-1-04
291-015-0145	8-9-04	Adopt	9-1-04	291-117-0010	7-19-04	Repeal	9-1-04
291-015-0150	8-9-04	Adopt	9-1-04	291-117-0020	1-20-04	Amend(T)	3-1-04
291-022-0100	10-21-04	Adopt(T)	12-1-04	291-117-0020	7-19-04	Repeal	9-1-04
291-022-0110	10-21-04	Adopt(T)	12-1-04	291-117-0030	7-19-04	Repeal	9-1-04
291-022-0120	10-21-04	Adopt(T)	12-1-04	291-117-0040	7-19-04	Repeal	9-1-04
291-061-0051	9-28-04	Amend	11-1-04	291-117-0050	7-19-04	Repeal	9-1-04
291-061-0096	9-28-04	Amend	11-1-04	291-117-0060	7-19-04	Repeal	9-1-04
291-061-0100	9-28-04	Amend	11-1-04	291-117-0070	7-19-04	Adopt	9-1-04
291-061-0120	9-28-04	Amend	11-1-04	291-117-0080	7-19-04	Adopt	9-1-04
291-061-0125	9-28-04	Amend	11-1-04	291-117-0090	7-19-04	Adopt	9-1-04

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291-117-0110	7-19-04	Adopt	9-1-04	291-180-0450	8-11-04	Amend(T)	9-1-04
291-117-0120	7-19-04	Adopt	9-1-04	291-180-0460	8-11-04	Amend(T)	9-1-04
291-117-0130	7-19-04	Adopt	9-1-04	291-180-0470	8-11-04	Amend(T)	9-1-04
291-117-0140	7-19-04	Adopt	9-1-04	291-180-0480	8-11-04	Amend(T)	9-1-04
291-153-0005	5-14-04	Amend(T)	6-1-04	291-180-0490	8-11-04	Amend(T)	9-1-04
291-153-0005	11-2-04	Amend	12-1-04	291-180-0500	8-11-04	Amend(T)	9-1-04
291-153-0010	5-14-04	Suspend	6-1-04	291-180-0510	8-11-04	Amend(T)	9-1-04
291-153-0010	11-2-04	Repeal	12-1-04	291-180-0520	8-11-04	Amend(T)	9-1-04
291-153-0020	5-14-04	Adopt(T)	6-1-04	291-180-0530	8-11-04	Amend(T)	9-1-04
291-153-0020	11-2-04	Adopt	12-1-04	291-180-0540	8-11-04	Amend(T)	9-1-04
291-180-0060	8-11-04	Suspend	9-1-04	291-180-0550	8-11-04	Amend(T)	9-1-04
291-180-0065	8-11-04	Suspend	9-1-04	291-180-0560	8-11-04	Amend(T)	9-1-04
291-180-0070	8-11-04	Suspend	9-1-04	291-180-0570	8-11-04	Amend(T)	9-1-04
291-180-0071	8-11-04	Suspend	9-1-04	291-180-0580	8-11-04	Amend(T)	9-1-04
291-180-0072	8-11-04	Suspend	9-1-04	291-180-0590	8-11-04	Amend(T)	9-1-04
291-180-0073	8-11-04	Suspend	9-1-04	291-180-0600	8-11-04	Amend(T)	9-1-04
291-180-0075	8-11-04	Suspend	9-1-04	291-180-0610	8-11-04	Amend(T)	9-1-04
291-180-0080	8-11-04	Suspend	9-1-04	291-180-0620	8-11-04	Amend(T)	9-1-04
291-180-0085	8-11-04	Suspend	9-1-04	291-180-0630	8-11-04	Amend(T)	9-1-04
291-180-0090	8-11-04	Suspend	9-1-04	291-203-0020	10-21-04	Amend	12-1-04
291-180-0095	8-11-04	Suspend	9-1-04	309-018-0100	3-1-04	Repeal	4-1-04
291-180-0101	8-11-04	Amend(T)	9-1-04	309-018-0110	3-1-04	Repeal	4-1-04
291-180-0111	8-11-04	Amend(T)	9-1-04	309-018-0120	3-1-04	Repeal	4-1-04
291-180-0120	8-11-04	Amend(T)	9-1-04	309-018-0130	3-1-04	Repeal	4-1-04
291-180-0130	8-11-04	Amend(T)	9-1-04	309-018-0140	3-1-04	Repeal	4-1-04
291-180-0140	8-11-04	Amend(T)	9-1-04	309-018-0150	3-1-04	Repeal	4-1-04
291-180-0150	8-11-04	Amend(T)	9-1-04	309-018-0160	3-1-04	Repeal	4-1-04
291-180-0160	8-11-04	Amend(T)	9-1-04	309-018-0170	3-1-04	Repeal	4-1-04
291-180-0170	8-11-04	Amend(T)	9-1-04	309-018-0180	3-1-04	Repeal	4-1-04
291-180-0180	8-11-04	Amend(T)	9-1-04	309-018-0190	3-1-04	Repeal	4-1-04
291-180-0190	8-11-04	Amend(T)	9-1-04	309-040-0200	12-1-04	Am. & Ren.	12-1-04
291-180-0200	8-11-04	Amend(T)	9-1-04	309-040-0210	12-1-04	Am. & Ren.	12-1-04
291-180-0210	8-11-04	Amend(T)	9-1-04	309-040-0220	12-1-04	Am. & Ren.	12-1-04
291-180-0220	8-11-04	Amend(T)	9-1-04	309-040-0230	12-1-04	Am. & Ren.	12-1-04
291-180-0230	8-11-04	Amend(T)	9-1-04	309-040-0240	12-1-04	Am. & Ren.	12-1-04
291-180-0240	8-11-04	Amend(T)	9-1-04	309-040-0250	12-1-04	Am. & Ren.	12-1-04
291-180-0250	8-11-04	Amend(T)	9-1-04	309-040-0260	12-1-04	Am. & Ren.	12-1-04
291-180-0260	8-11-04	Amend(T)	9-1-04	309-040-0270	12-1-04	Am. & Ren.	12-1-04
291-180-0270	8-11-04	Amend(T)	9-1-04	309-040-0280	12-1-04	Am. & Ren.	12-1-04
291-180-0280	8-11-04	Amend(T)	9-1-04	309-040-0290	12-1-04	Am. & Ren.	12-1-04
291-180-0290	8-11-04	Amend(T)	9-1-04	309-041-0300	1-1-04	Repeal	2-1-04
291-180-0300	8-11-04	Amend(T)	9-1-04	309-041-0305	1-1-04	Repeal	2-1-04
291-180-0310	8-11-04	Amend(T)	9-1-04	309-041-0310	1-1-04	Repeal	2-1-04
291-180-0320	8-11-04	Amend(T)	9-1-04	309-041-0315	1-1-04	Repeal	2-1-04
291-180-0330	8-11-04	Amend(T)	9-1-04	309-041-0320	1-1-04	Repeal	2-1-04
291-180-0340	8-11-04	Amend(T)	9-1-04	309-041-0325	9-10-04	Repeal	10-1-04
291-180-0350	8-11-04	Amend(T)	9-1-04	309-041-0330	9-10-04	Repeal	10-1-04
291-180-0360	8-11-04	Amend(T)	9-1-04	309-041-0335	9-10-04	Repeal	10-1-04
291-180-0370	8-11-04	Amend(T)	9-1-04	309-041-0375	1-1-04	Repeal	2-1-04
291-180-0380	8-11-04	Amend(T)	9-1-04	309-041-0400	1-1-04	Repeal	2-1-04
291-180-0390	8-11-04	Amend(T)	9-1-04	309-041-0405	1-1-04	Repeal	2-1-04
291-180-0400	8-11-04	Amend(T)	9-1-04	309-041-0410	1-1-04	Repeal	2-1-04
291-180-0410	8-11-04	Amend(T)	9-1-04	309-041-0415	1-1-04	Repeal	2-1-04
291-180-0420	8-11-04	Amend(T)	9-1-04	309-041-0435	1-1-04	Repeal	2-1-04
291-180-0430	8-11-04	Amend(T)	9-1-04	309-041-0445	1-1-04	Repeal	2-1-04

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309-041-0455	1-1-04	Repeal	2-1-04	309-044-0100	12-11-03	Amend(T)	1-1-04
309-041-0460	1-1-04	Repeal	2-1-04	309-044-0100	6-1-04	Am. & Ren.	7-1-04
309-041-0465	1-1-04	Repeal	2-1-04	309-044-0110	12-11-03	Amend(T)	1-1-04
309-041-0470	1-1-04	Repeal	2-1-04	309-044-0110	6-1-04	Am. & Ren.	7-1-04
309-041-0475	1-1-04	Repeal	2-1-04	309-044-0120	12-11-03	Amend(T)	1-1-04
309-041-0480	1-1-04	Repeal	2-1-04	309-044-0120	6-1-04	Am. & Ren.	7-1-04
309-041-1110	9-10-04	Repeal	10-1-04	309-044-0130	12-11-03	Amend(T)	1-1-04
309-041-1115	9-10-04	Repeal	10-1-04	309-044-0130	6-1-04	Am. & Ren.	7-1-04
309-041-1120	9-10-04	Repeal	10-1-04	309-044-0140	12-11-03	Amend(T)	1-1-04
309-041-1125	9-10-04	Repeal	10-1-04	309-044-0140	6-1-04	Am. & Ren.	7-1-04
309-041-1130	9-10-04	Repeal	10-1-04	309-044-0150	12-11-03	Amend(T)	1-1-04
309-041-1135	9-10-04	Repeal	10-1-04	309-044-0150	6-1-04	Am. & Ren.	7-1-04
309-041-1138	9-10-04	Repeal	10-1-04	309-044-0160	12-11-03	Amend(T)	1-1-04
309-041-1140	9-10-04	Repeal	10-1-04	309-044-0160	6-1-04	Am. & Ren.	7-1-04
309-041-1142	9-10-04	Repeal	10-1-04	309-044-0170	12-11-03	Amend(T)	1-1-04
309-041-1145	9-10-04	Repeal	10-1-04	309-044-0170	6-1-04	Am. & Ren.	7-1-04
309-041-1150	9-10-04	Repeal	10-1-04	309-044-0180	12-11-03	Amend(T)	1-1-04
309-041-1165	9-10-04	Repeal	10-1-04	309-044-0180	6-1-04	Am. & Ren.	7-1-04
309-041-1170	9-10-04	Repeal	10-1-04	309-044-0190	12-11-03	Amend(T)	1-1-04
309-041-1750	12-28-03	Am. & Ren.	2-1-04	309-044-0190	6-1-04	Am. & Ren.	7-1-04
309-041-1760	12-28-03	Am. & Ren.	2-1-04	309-044-0200	12-11-03	Amend(T)	1-1-04
309-041-1770	12-28-03	Am. & Ren.	2-1-04	309-044-0200	6-1-04	Am. & Ren.	7-1-04
309-041-1780	12-28-03	Am. & Ren.	2-1-04	309-044-0210	12-11-03	Amend(T)	1-1-04
309-041-1790	12-28-03	Am. & Ren.	2-1-04	309-044-0210	6-1-04	Am. & Ren.	7-1-04
309-041-1800	12-28-03	Am. & Ren.	2-1-04	309-047-0000	12-28-03	Am. & Ren.	2-1-04
309-041-1810	12-28-03	Am. & Ren.	2-1-04	309-047-0005	12-28-03	Am. & Ren.	2-1-04
309-041-1820	12-28-03	Am. & Ren.	2-1-04	309-047-0010	12-28-03	Am. & Ren.	2-1-04
309-041-1830	12-28-03	Am. & Ren.	2-1-04	309-047-0015	12-28-03	Am. & Ren.	2-1-04
309-041-1840	12-28-03	Am. & Ren.	2-1-04	309-047-0018	12-28-03	Am. & Ren.	2-1-04
309-041-1850	12-28-03	Am. & Ren.	2-1-04	309-047-0020	8-1-04	Repeal	9-1-04
309-041-1860	12-28-03	Am. & Ren.	2-1-04	309-047-0025	12-28-03	Am. & Ren.	2-1-04
309-041-1870	12-28-03	Am. & Ren.	2-1-04	309-047-0030	12-28-03	Am. & Ren.	2-1-04
309-041-1880	12-28-03	Am. & Ren.	2-1-04	309-047-0035	12-28-03	Am. & Ren.	2-1-04
309-041-1890	12-28-03	Am. & Ren.	2-1-04	309-047-0040	12-28-03	Am. & Ren.	2-1-04
309-041-1900	12-28-03	Am. & Ren.	2-1-04	309-047-0045	12-28-03	Am. & Ren.	2-1-04
309-041-1910	12-28-03	Am. & Ren.	2-1-04	309-047-0050	12-28-03	Am. & Ren.	2-1-04
309-041-1920	12-28-03	Am. & Ren.	2-1-04	309-047-0055	12-28-03	Am. & Ren.	2-1-04
309-041-2000	12-28-03	Am. & Ren.	2-1-04	309-047-0060	12-28-03	Am. & Ren.	2-1-04
309-041-2010	12-28-03	Am. & Ren.	2-1-04	309-047-0065	12-28-03	Am. & Ren.	2-1-04
309-041-2020	12-28-03	Am. & Ren.	2-1-04	309-047-0070	12-28-03	Am. & Ren.	2-1-04
309-041-2030	12-28-03	Am. & Ren.	2-1-04	309-047-0075	12-28-03	Am. & Ren.	2-1-04
309-041-2040	12-28-03	Am. & Ren.	2-1-04	309-047-0080	12-28-03	Am. & Ren.	2-1-04
309-041-2050	12-28-03	Am. & Ren.	2-1-04	309-047-0085	12-28-03	Am. & Ren.	2-1-04
309-041-2060	12-28-03	Am. & Ren.	2-1-04	309-047-0090	12-28-03	Am. & Ren.	2-1-04
309-041-2070	12-28-03	Am. & Ren.	2-1-04	309-047-0095	12-28-03	Am. & Ren.	2-1-04
309-041-2080	12-28-03	Am. & Ren.	2-1-04	309-047-0100	12-28-03	Am. & Ren.	2-1-04
309-041-2090	12-28-03	Am. & Ren.	2-1-04	309-047-0105	12-28-03	Am. & Ren.	2-1-04
309-041-2100	9-10-04	Repeal	10-1-04	309-047-0110	12-28-03	Am. & Ren.	2-1-04
309-041-2110	12-28-03	Am. & Ren.	2-1-04	309-047-0115	12-28-03	Am. & Ren.	2-1-04
309-041-2120	12-28-03	Am. & Ren.	2-1-04	309-047-0120	12-28-03	Am. & Ren.	2-1-04
309-041-2130	12-28-03	Am. & Ren.	2-1-04	309-047-0125	12-28-03	Am. & Ren.	2-1-04
309-041-2140	12-28-03	Am. & Ren.	2-1-04	309-047-0130	12-28-03	Am. & Ren.	2-1-04
309-041-2150	12-28-03	Am. & Ren.	2-1-04	309-047-0133	12-28-03	Am. & Ren.	2-1-04
309-041-2160	12-28-03	Am. & Ren.	2-1-04	309-047-0135	12-28-03	Am. & Ren.	2-1-04
309-041-2170	12-28-03	Am. & Ren.	2-1-04	309-047-0140	12-28-03	Am. & Ren.	2-1-04

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309-048-0005	1-1-04	Repeal	2-1-04	330-060-0075	11-1-04	Amend	11-1-04
309-048-0010	1-1-04	Repeal	2-1-04	330-060-0090	11-1-04	Amend	11-1-04
309-048-0015	1-1-04	Repeal	2-1-04	330-060-0095	11-1-04	Amend	11-1-04
309-048-0020	1-1-04	Repeal	2-1-04	330-061-0005	11-1-04	Amend	11-1-04
309-048-0025	1-1-04	Repeal	2-1-04	330-061-0010	11-1-04	Amend	11-1-04
309-048-0030	1-1-04	Repeal	2-1-04	330-061-0015	11-1-04	Amend	11-1-04
309-048-0035	1-1-04	Repeal	2-1-04	330-061-0020	11-1-04	Amend	11-1-04
309-049-0030	1-1-04	Repeal	2-1-04	330-061-0025	11-1-04	Amend	11-1-04
309-049-0035	1-1-04	Repeal	2-1-04	330-061-0030	11-1-04	Amend	11-1-04
309-049-0040	1-1-04	Repeal	2-1-04	330-061-0035	11-1-04	Amend	11-1-04
309-049-0045	1-1-04	Repeal	2-1-04	330-061-0040	11-1-04	Amend	11-1-04
309-049-0050	1-1-04	Repeal	2-1-04	330-061-0045	11-1-04	Amend	11-1-04
309-049-0055	1-1-04	Repeal	2-1-04	330-061-0050	11-1-04	Amend	11-1-04
309-049-0060	1-1-04	Repeal	2-1-04	330-061-0060	11-1-04	Amend	11-1-04
309-049-0065	1-1-04	Repeal	2-1-04	330-070-0010	1-21-04	Amend	3-1-04
309-049-0070	1-1-04	Repeal	2-1-04	330-070-0013	1-21-04	Amend	3-1-04
309-049-0075	1-1-04	Repeal	2-1-04	330-070-0014	1-21-04	Amend	3-1-04
309-049-0080	1-1-04	Repeal	2-1-04	330-070-0020	1-21-04	Amend	3-1-04
309-049-0085	1-1-04	Repeal	2-1-04	330-070-0021	1-21-04	Amend	3-1-04
309-049-0090	1-1-04	Repeal	2-1-04	330-070-0022	1-21-04	Amend	3-1-04
309-049-0095	1-1-04	Repeal	2-1-04	330-070-0024	1-21-04	Amend	3-1-04
309-049-0100	1-1-04	Repeal	2-1-04	330-070-0025	1-21-04	Amend	3-1-04
309-049-0105	1-1-04	Repeal	2-1-04	330-070-0026	1-21-04	Amend	3-1-04
309-049-0110	1-1-04	Repeal	2-1-04	330-070-0027	1-21-04	Amend	3-1-04
309-049-0115	1-1-04	Repeal	2-1-04	330-070-0040	1-21-04	Amend	3-1-04
309-049-0120	1-1-04	Repeal	2-1-04	330-070-0045	1-21-04	Amend	3-1-04
309-049-0130	1-1-04	Repeal	2-1-04	330-070-0048	1-21-04	Amend	3-1-04
309-049-0135	1-1-04	Repeal	2-1-04	330-070-0055	1-21-04	Amend	3-1-04
309-049-0140	1-1-04	Repeal	2-1-04	330-070-0059	1-21-04	Adopt	3-1-04
309-049-0145	1-1-04	Repeal	2-1-04	330-070-0060	1-21-04	Amend	3-1-04
309-049-0150	1-1-04	Repeal	2-1-04	330-070-0062	1-21-04	Amend	3-1-04
309-049-0155	1-1-04	Repeal	2-1-04	330-070-0063	1-21-04	Amend	3-1-04
309-049-0160	1-1-04	Repeal	2-1-04	330-070-0064	1-21-04	Adopt	3-1-04
309-049-0165	1-1-04	Repeal	2-1-04	330-070-0070	1-21-04	Amend	3-1-04
309-049-0170	1-1-04	Repeal	2-1-04	330-070-0073	1-21-04	Amend	3-1-04
309-049-0175	1-1-04	Repeal	2-1-04	330-070-0073	8-2-04	Amend	9-1-04
309-049-0180	1-1-04	Repeal	2-1-04	330-070-0085	1-21-04	Amend	3-1-04
309-049-0185	1-1-04	Repeal	2-1-04	330-070-0089	1-21-04	Amend	3-1-04
309-049-0190	1-1-04	Repeal	2-1-04	330-070-0091	1-21-04	Amend	3-1-04
309-049-0193	1-1-04	Repeal	2-1-04	330-070-0097	1-21-04	Amend	3-1-04
309-049-0195	1-1-04	Repeal	2-1-04	330-090-0105	1-21-04	Amend	3-1-04
309-049-0200	1-1-04	Repeal	2-1-04	330-090-0105	7-1-04	Amend	8-1-04
309-049-0205	1-1-04	Repeal	2-1-04	330-090-0110	1-21-04	Amend	3-1-04
309-049-0207	1-1-04	Repeal	2-1-04	330-090-0110	7-1-04	Amend	8-1-04
309-049-0210	1-1-04	Repeal	2-1-04	330-090-0120	1-21-04	Amend	3-1-04
309-049-0215	1-1-04	Repeal	2-1-04	330-090-0120	7-1-04	Amend	8-1-04
309-049-0220	1-1-04	Repeal	2-1-04	330-090-0130	1-21-04	Amend	3-1-04
309-049-0225	1-1-04	Repeal	2-1-04	330-090-0130	7-1-04	Amend	8-1-04
330-060-0005	11-1-04	Amend	11-1-04	330-090-0135	1-21-04	Amend	3-1-04
330-060-0010	11-1-04	Amend	11-1-04	330-090-0135	7-1-04	Amend	8-1-04
330-060-0015	11-1-04	Amend	11-1-04	330-090-0140	1-21-04	Amend	3-1-04
330-060-0020	11-1-04	Amend	11-1-04	330-090-0140	7-1-04	Amend	8-1-04
330-060-0040	11-1-04	Amend	11-1-04	330-090-0150	1-21-04	Amend	3-1-04
330-060-0060	11-1-04	Amend	11-1-04	330-090-0150	7-1-04	Amend	8-1-04
330-060-0065	11-1-04	Repeal	11-1-04	330-140-0010	12-1-04	Amend	11-1-04

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330-140-0030	12-1-04	Amend	11-1-04	331-130-0010	7-1-04	Repeal	8-1-04
330-140-0040	12-1-04	Amend	11-1-04	331-130-0020	7-1-04	Repeal	8-1-04
330-140-0050	12-1-04	Amend	11-1-04	331-135-0000	7-1-04	Amend	8-1-04
330-140-0060	12-1-04	Amend	11-1-04	331-135-0010	7-1-04	Repeal	8-1-04
330-140-0070	12-1-04	Amend	11-1-04	331-135-0020	7-1-04	Repeal	8-1-04
330-140-0080	12-1-04	Amend	11-1-04	331-135-0030	7-1-04	Repeal	8-1-04
330-140-0090	12-1-04	Amend	11-1-04	331-200-0000	7-1-04	Repeal	8-1-04
330-140-0100	12-1-04	Amend	11-1-04	331-200-0010	7-1-04	Repeal	8-1-04
330-140-0110	12-1-04	Amend	11-1-04	331-200-0020	7-1-04	Repeal	8-1-04
330-140-0120	12-1-04	Amend	11-1-04	331-200-0030	7-1-04	Repeal	8-1-04
330-140-0130	12-1-04	Amend	11-1-04	331-205-0000	7-1-04	Repeal	8-1-04
330-140-0140	12-1-04	Amend	11-1-04	331-205-0010	7-1-04	Repeal	8-1-04
331-001-0000	2-13-04	Adopt	3-1-04	331-205-0020	7-1-04	Amend	8-1-04
331-001-0010	2-13-04	Adopt	3-1-04	331-205-0030	7-1-04	Amend	8-1-04
331-001-0020	2-13-04	Adopt	3-1-04	331-210-0000	7-1-04	Amend	8-1-04
331-010-0000	2-13-04	Adopt	3-1-04	331-210-0010	7-1-04	Amend	8-1-04
331-010-0010	2-13-04	Adopt	3-1-04	331-210-0020	7-1-04	Amend	8-1-04
331-010-0020	2-13-04	Adopt	3-1-04	331-210-0021	7-1-04	Adopt	8-1-04
331-010-0030	2-13-04	Adopt	3-1-04	331-215-0000	7-1-04	Amend	8-1-04
331-010-0040	2-13-04	Adopt	3-1-04	331-215-0010	7-1-04	Amend	8-1-04
331-020-0000	2-13-04	Adopt	3-1-04	331-215-0020	7-1-04	Amend	8-1-04
331-020-0010	2-13-04	Adopt	3-1-04	331-215-0030	7-1-04	Amend	8-1-04
331-020-0020	2-13-04	Adopt	3-1-04	331-215-0040	7-1-04	Amend	8-1-04
331-020-0030	2-13-04	Adopt	3-1-04	331-215-0050	7-1-04	Repeal	8-1-04
331-020-0040	2-13-04	Adopt	3-1-04	331-220-0000	7-1-04	Amend	8-1-04
331-020-0050	2-13-04	Adopt	3-1-04	331-220-0010	7-1-04	Amend	8-1-04
331-020-0060	2-13-04	Adopt	3-1-04	331-220-0020	7-1-04	Amend	8-1-04
331-020-0070	2-13-04	Adopt	3-1-04	331-220-0030	7-1-04	Amend	8-1-04
331-030-0000	2-13-04	Adopt	3-1-04	331-220-0040	7-1-04	Amend	8-1-04
331-030-0010	2-13-04	Adopt	3-1-04	331-220-0050	7-1-04	Amend	8-1-04
331-030-0020	2-13-04	Adopt	3-1-04	331-220-0060	7-1-04	Amend	8-1-04
331-030-0030	2-13-04	Adopt	3-1-04	331-220-0070	7-1-04	Repeal	8-1-04
331-100-0000	7-1-04	Repeal	8-1-04	331-220-0080	7-1-04	Amend	8-1-04
331-100-0005	7-1-04	Repeal	8-1-04	331-225-0000	7-1-04	Amend	8-1-04
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331-100-0030	7-1-04	Repeal	8-1-04	331-225-0020	7-1-04	Amend	8-1-04
331-105-0000	7-1-04	Repeal	8-1-04	331-225-0030	7-1-04	Amend	8-1-04
331-105-0010	7-1-04	Repeal	8-1-04	331-225-0040	7-1-04	Amend	8-1-04
331-105-0020	7-1-04	Amend	8-1-04	331-225-0050	7-1-04	Amend	8-1-04
331-105-0030	7-1-04	Amend	8-1-04	331-225-0060	7-1-04	Amend	8-1-04
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331-110-0010	7-1-04	Amend	8-1-04	331-225-0080	7-1-04	Amend	8-1-04
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331-115-0040	7-1-04	Repeal	8-1-04	331-225-0120	7-1-04	Amend	8-1-04
331-115-0050	7-1-04	Repeal	8-1-04	331-225-0130	7-1-04	Amend	8-1-04
331-115-0060	7-1-04	Amend	8-1-04	331-225-0140	7-1-04	Amend	8-1-04
331-115-0070	7-1-04	Repeal	8-1-04	331-225-0150	7-1-04	Amend	8-1-04
331-120-0000	7-1-04	Amend	8-1-04	331-225-0160	7-1-04	Amend	8-1-04
331-120-0020	7-1-04	Amend	8-1-04	331-400-0000	7-1-04	Repeal	8-1-04
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331-125-0010	7-1-04	Amend	8-1-04	331-400-0030	7-1-04	Repeal	8-1-04
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331-405-0020	7-1-04	Amend	8-1-04	331-520-0070	7-1-04	Amend	8-1-04
331-405-0030	7-1-04	Amend	8-1-04	331-525-0000	7-1-04	Amend	8-1-04
331-405-0040	7-1-04	Repeal	8-1-04	331-525-0010	7-1-04	Repeal	8-1-04
331-405-0050	7-1-04	Repeal	8-1-04	331-525-0020	7-1-04	Amend	8-1-04
331-410-0000	7-1-04	Amend	8-1-04	331-525-0030	7-1-04	Repeal	8-1-04
331-410-0005	7-1-04	Repeal	8-1-04	331-525-0035	7-1-04	Adopt	8-1-04
331-410-0010	7-1-04	Amend	8-1-04	331-525-0038	7-1-04	Adopt	8-1-04
331-410-0020	7-1-04	Amend	8-1-04	331-525-0040	7-1-04	Amend	8-1-04
331-410-0030	7-1-04	Amend	8-1-04	331-525-0050	7-1-04	Repeal	8-1-04
331-410-0040	7-1-04	Amend	8-1-04	331-525-0055	7-1-04	Adopt	8-1-04
331-410-0050	7-1-04	Amend	8-1-04	331-525-0060	7-1-04	Adopt	8-1-04
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331-410-0080	7-1-04	Amend	8-1-04	331-535-0000	7-1-04	Amend	8-1-04
331-410-0090	7-1-04	Amend	8-1-04	331-535-0010	7-1-04	Amend	8-1-04
331-410-0100	7-1-04	Repeal	8-1-04	331-535-0020	7-1-04	Amend	8-1-04
331-415-0000	7-1-04	Amend	8-1-04	331-535-0030	7-1-04	Amend	8-1-04
331-415-0010	7-1-04	Amend	8-1-04	331-535-0050	7-1-04	Amend	8-1-04
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331-420-0020	7-1-04	Amend	8-1-04	331-535-0080	7-1-04	Amend	8-1-04
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331-430-0000	7-1-04	Repeal	8-1-04	331-545-0000	7-1-04	Amend	8-1-04
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331-430-0020	7-1-04	Repeal	8-1-04	331-545-0020	7-1-04	Amend	8-1-04
331-430-0030	7-1-04	Amend	8-1-04	331-550-0000	7-1-04	Amend	8-1-04
331-500-0000	7-1-04	Repeal	8-1-04	331-555-0000	7-1-04	Repeal	8-1-04
331-500-0010	7-1-04	Repeal	8-1-04	331-555-0010	7-1-04	Amend	8-1-04
331-500-0020	7-1-04	Repeal	8-1-04	331-555-0020	7-1-04	Am. & Ren.	8-1-04
331-500-0030	7-1-04	Repeal	8-1-04	331-555-0030	7-1-04	Amend	8-1-04
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331-515-0000	7-1-04	Amend	8-1-04	331-565-0010	7-1-04	Repeal	8-1-04
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331-515-0030	7-1-04	Amend	8-1-04	331-565-0030	7-1-04	Amend	8-1-04
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331-520-0010	7-1-04	Amend	8-1-04	331-565-0070	7-1-04	Repeal	8-1-04
331-520-0020	7-1-04	Repeal	8-1-04	331-565-0075	7-1-04	Adopt	8-1-04
331-520-0030	7-1-04	Amend	8-1-04	331-565-0080	7-1-04	Adopt	8-1-04
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331-575-0010	7-1-04	Amend	8-1-04	332-015-0010	7-1-04	Amend	8-1-04
331-575-0020	7-1-04	Amend	8-1-04	332-015-0030	7-1-04	Amend	8-1-04
331-575-0030	7-1-04	Amend	8-1-04	332-015-0040	7-1-04	Amend	8-1-04
331-575-0040	7-1-04	Amend	8-1-04	332-015-0050	7-1-04	Amend	8-1-04
331-580-0000	7-1-04	Amend	8-1-04	332-015-0060	7-1-04	Amend	8-1-04
331-580-0010	7-1-04	Amend	8-1-04	332-015-0065	7-1-04	Amend	8-1-04
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331-585-0000	7-1-04	Amend	8-1-04	332-020-0010	7-1-04	Amend	8-1-04
331-585-0010	7-1-04	Amend	8-1-04	332-020-0015	7-1-04	Amend	8-1-04
331-585-0020	7-1-04	Amend	8-1-04	332-020-0020	7-1-04	Amend	8-1-04
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331-590-0020	7-1-04	Amend	8-1-04	332-025-0020	7-1-04	Amend	8-1-04
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331-650-0000	7-1-04	Adopt	8-1-04	332-025-0022	7-1-04	Amend	8-1-04
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331-705-0060	7-1-04	Amend	8-1-04	333-003-0020	7-16-04	Adopt	9-1-04
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331-715-0000	7-1-04	Amend	8-1-04	333-003-0080	7-16-04	Adopt	9-1-04
331-715-0010	7-1-04	Amend	8-1-04	333-003-0100	7-30-04	Adopt	9-1-04
331-715-0010	11-8-04	Amend(T)	12-1-04	333-003-0105	7-30-04	Adopt	9-1-04
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331-715-0050	7-1-04	Repeal	8-1-04	333-003-0125	7-30-04	Adopt	9-1-04
331-720-0000	7-1-04	Amend	8-1-04	333-003-0130	7-30-04	Adopt	9-1-04
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332-001-0005	7-1-04	Repeal	8-1-04	333-012-0055	4-9-04	Amend	5-1-04
332-001-0010	7-1-04	Repeal	8-1-04	333-012-0057	4-9-04	Amend	5-1-04
332-001-0020	7-1-04	Repeal	8-1-04	333-012-0060	4-9-04	Amend	5-1-04
332-001-0030	7-1-04	Repeal	8-1-04	333-012-0061	4-9-04	Adopt	5-1-04

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333-012-0065	4-9-04	Amend	5-1-04	333-020-0149	12-16-03	Adopt	2-1-04
333-012-0067	4-9-04	Adopt	5-1-04	333-020-0150	12-16-03	Amend	2-1-04
333-012-0070	4-9-04	Amend	5-1-04	333-020-0151	12-16-03	Adopt	2-1-04
333-013-0006	1-2-04	Repeal	2-1-04	333-020-0153	12-16-03	Adopt	2-1-04
333-013-0026	1-2-04	Repeal	2-1-04	333-020-0155	12-16-03	Amend	2-1-04
333-015-0025	5-7-04	Amend(T)	6-1-04	333-020-0160	12-16-03	Amend	2-1-04
333-015-0025	8-19-04	Amend	10-1-04	333-020-0165	12-16-03	Amend	2-1-04
333-015-0025(T)	8-19-04	Repeal	10-1-04	333-024-0210	9-17-04	Amend(T)	11-1-04
333-015-0030	5-7-04	Amend(T)	6-1-04	333-024-0215	9-17-04	Amend(T)	11-1-04
333-015-0030	8-19-04	Amend	10-1-04	333-024-0220	9-17-04	Amend(T)	11-1-04
333-015-0030(T)	8-19-04	Repeal	10-1-04	333-024-0225	9-17-04	Amend(T)	11-1-04
333-015-0034	5-7-04	Amend(T)	6-1-04	333-024-0230	9-17-04	Amend(T)	11-1-04
333-015-0034	8-19-04	Amend	10-1-04	333-024-0231	9-17-04	Amend(T)	11-1-04
333-015-0034(T)	8-19-04	Repeal	10-1-04	333-024-0232	9-17-04	Amend(T)	11-1-04
333-015-0035	5-7-04	Amend(T)	6-1-04	333-024-0235	9-17-04	Amend(T)	11-1-04
333-015-0035	8-19-04	Amend	10-1-04	333-024-0240	9-17-04	Amend(T)	11-1-04
333-015-0035(T)	8-19-04	Repeal	10-1-04	333-024-0241	9-17-04	Adopt(T)	11-1-04
333-015-0040	5-7-04	Amend(T)	6-1-04	333-024-0500	3-23-04	Am. & Ren.	5-1-04
333-015-0040	8-19-04	Amend	10-1-04	333-024-0510	3-23-04	Am. & Ren.	5-1-04
333-015-0040(T)	8-19-04	Repeal	10-1-04	333-024-0520	3-23-04	Renumber	5-1-04
333-015-0045	5-7-04	Amend(T)	6-1-04	333-024-0530	3-23-04	Renumber	5-1-04
333-015-0045	8-19-04	Amend	10-1-04	333-024-0540	3-23-04	Am. & Ren.	5-1-04
333-015-0045(T)	8-19-04	Repeal	10-1-04	333-024-0550	3-23-04	Am. & Ren.	5-1-04
333-015-0050	5-7-04	Amend(T)	6-1-04	333-024-0560	3-23-04	Repeal	5-1-04
333-015-0050	8-19-04	Amend	10-1-04	333-025-0000	7-1-04	Am. & Ren.	8-1-04
333-015-0050(T)	8-19-04	Repeal	10-1-04	333-025-0002	7-1-04	Am. & Ren.	8-1-04
333-015-0055	5-7-04	Suspend	6-1-04	333-025-0002(5)-(9)	7-1-04	Am. & Ren.	8-1-04
333-015-0055	8-19-04	Repeal	10-1-04	333-025-0004(1)-(10)	7-1-04	Am. & Ren.	8-1-04
333-015-0060	5-7-04	Amend(T)	6-1-04	333-025-0004(11)-(13)	7-1-04	Am. & Ren.	8-1-04
333-015-0060	8-19-04	Amend	10-1-04	333-025-0005	7-1-04	Am. & Ren.	8-1-04
333-015-0060(T)	8-19-04	Repeal	10-1-04	333-025-0006	7-1-04	Am. & Ren.	8-1-04
333-015-0065	5-7-04	Adopt(T)	6-1-04	333-025-0007	7-1-04	Am. & Ren.	8-1-04
333-015-0065	8-19-04	Adopt	10-1-04	333-025-0007(5)-(10)	7-1-04	Am. & Ren.	8-1-04
333-015-0065(T)	8-19-04	Repeal	10-1-04	333-025-0008	7-1-04	Am. & Ren.	8-1-04
333-015-0070	5-7-04	Adopt(T)	6-1-04	333-025-0009	7-1-04	Am. & Ren.	8-1-04
333-015-0070	8-19-04	Adopt	10-1-04	333-025-0012	7-1-04	Am. & Ren.	8-1-04
333-015-0070(T)	8-19-04	Repeal	10-1-04	333-025-0014	7-1-04	Am. & Ren.	8-1-04
333-015-0075	5-7-04	Adopt(T)	6-1-04	333-025-0018	7-1-04	Repeal	8-1-04
333-015-0075	8-19-04	Adopt	10-1-04	333-025-0027	7-1-04	Am. & Ren.	8-1-04
333-015-0075(T)	8-19-04	Repeal	10-1-04	333-025-0029	7-1-04	Am. & Ren.	8-1-04
333-015-0080	5-7-04	Adopt(T)	6-1-04	333-025-0030	7-1-04	Repeal	8-1-04
333-015-0080	8-19-04	Adopt	10-1-04	333-025-0040	7-1-04	Am. & Ren.	8-1-04
333-015-0080(T)	8-19-04	Repeal	10-1-04	333-025-0050	7-1-04	Am. & Ren.	8-1-04
333-015-0085	5-7-04	Adopt(T)	6-1-04	333-025-0065	7-1-04	Am. & Ren.	8-1-04
333-015-0085	8-19-04	Adopt	10-1-04	333-025-0070	7-1-04	Repeal	8-1-04
333-015-0085(T)	8-19-04	Repeal	10-1-04	333-025-0075	7-1-04	Am. & Ren.	8-1-04
333-015-0090	5-7-04	Adopt(T)	6-1-04	333-025-0080	7-1-04	Repeal	8-1-04
333-015-0090	8-19-04	Adopt	10-1-04	333-025-0090	7-1-04	Repeal	8-1-04
333-015-0090(T)	8-19-04	Repeal	10-1-04	333-025-0095	7-1-04	Repeal	8-1-04
333-020-0125	12-16-03	Amend	2-1-04	333-025-0100	3-23-04	Adopt	5-1-04
333-020-0127	12-16-03	Adopt	2-1-04	333-025-0100(T)	3-23-04	Repeal	5-1-04
333-020-0130	12-16-03	Amend	2-1-04	333-025-0105	3-23-04	Adopt	5-1-04
333-020-0135	12-16-03	Amend	2-1-04	333-025-0105(T)	3-23-04	Repeal	5-1-04
333-020-0140	12-16-03	Amend	2-1-04	333-025-0110	3-23-04	Adopt	5-1-04
333-020-0145	12-16-03	Amend	2-1-04	333-025-0110(T)	3-23-04	Repeal	5-1-04

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333-025-0115(T)	3-23-04	Repeal	5-1-04	333-055-0015	3-23-04	Amend	5-1-04
333-025-0120	3-23-04	Adopt	5-1-04	333-055-0030	3-23-04	Amend	5-1-04
333-025-0120(T)	3-23-04	Repeal	5-1-04	333-055-0035	3-23-04	Amend	5-1-04
333-025-0125	3-23-04	Adopt	5-1-04	333-061-0010	10-21-04	Amend	12-1-04
333-025-0125(T)	3-23-04	Repeal	5-1-04	333-061-0020	4-9-04	Amend(T)	5-1-04
333-025-0130	3-23-04	Adopt	5-1-04	333-061-0020	5-1-04	Amend	8-1-04
333-025-0130(T)	3-23-04	Repeal	5-1-04	333-061-0020	10-21-04	Amend	12-1-04
333-025-0135(T)	3-23-04	Repeal	5-1-04	333-061-0020	11-2-04	Amend	12-1-04
333-025-0140(T)	3-23-04	Repeal	5-1-04	333-061-0020(T)	5-1-04	Repeal	8-1-04
333-025-0145(T)	3-23-04	Repeal	5-1-04	333-061-0025	4-9-04	Amend(T)	5-1-04
333-025-0150(T)	3-23-04	Repeal	5-1-04	333-061-0025	5-1-04	Amend	8-1-04
333-025-0155(T)	3-23-04	Repeal	5-1-04	333-061-0025(T)	5-1-04	Repeal	8-1-04
333-025-0160(T)	3-23-04	Repeal	5-1-04	333-061-0030	10-21-04	Amend	12-1-04
333-029-0105	2-13-04	Amend(T)	3-1-04	333-061-0032	10-21-04	Amend	12-1-04
333-029-0105	4-9-04	Amend	5-1-04	333-061-0034	4-9-04	Amend(T)	5-1-04
333-029-0105(T)	4-9-04	Repeal	5-1-04	333-061-0034	5-1-04	Amend	8-1-04
333-029-0110	2-13-04	Amend(T)	3-1-04	333-061-0034	10-21-04	Amend	12-1-04
333-029-0110	4-9-04	Amend	5-1-04	333-061-0034(T)	5-1-04	Repeal	8-1-04
333-029-0110(T)	4-9-04	Repeal	5-1-04	333-061-0036	10-21-04	Amend	12-1-04
333-030-0095	2-13-04	Amend(T)	3-1-04	333-061-0040	10-21-04	Amend	12-1-04
333-030-0095	4-9-04	Amend	5-1-04	333-061-0043	10-21-04	Amend	12-1-04
333-030-0095(T)	4-9-04	Repeal	5-1-04	333-061-0050	10-21-04	Amend	12-1-04
333-040-0135	4-9-04	Amend	5-1-04	333-061-0057	4-9-04	Amend(T)	5-1-04
333-040-0135(T)	4-9-04	Repeal	5-1-04	333-061-0057	5-1-04	Amend	8-1-04
333-048-0000	10-8-04	Adopt(T)	11-1-04	333-061-0057(T)	5-1-04	Repeal	8-1-04
333-050-0010	11-10-04	Amend(T)	12-1-04	333-061-0058	4-9-04	Adopt(T)	5-1-04
333-050-0020	11-10-04	Amend(T)	12-1-04	333-061-0058	5-1-04	Adopt	8-1-04
333-050-0030	11-10-04	Amend(T)	12-1-04	333-061-0058	10-21-04	Amend	12-1-04
333-050-0040	11-10-04	Amend(T)	12-1-04	333-061-0058(T)	5-1-04	Repeal	8-1-04
333-050-0050	11-10-04	Amend(T)	12-1-04	333-061-0060	4-9-04	Amend(T)	5-1-04
333-050-0060	11-10-04	Amend(T)	12-1-04	333-061-0060	5-1-04	Amend	8-1-04
333-050-0080	11-10-04	Amend(T)	12-1-04	333-061-0060	10-21-04	Amend	12-1-04
333-050-0090	11-10-04	Amend(T)	12-1-04	333-061-0060(T)	5-1-04	Repeal	8-1-04
333-050-0100	11-10-04	Amend(T)	12-1-04	333-061-0061	4-9-04	Amend(T)	5-1-04
333-050-0130	11-10-04	Amend(T)	12-1-04	333-061-0061	5-1-04	Amend	8-1-04
333-050-0140	11-10-04	Amend(T)	12-1-04	333-061-0061(T)	5-1-04	Repeal	8-1-04
333-050-0141	11-10-04	Adopt(T)	12-1-04	333-061-0064	4-9-04	Adopt(T)	5-1-04
333-054-0000	1-5-04	Amend	2-1-04	333-061-0064	5-1-04	Adopt	8-1-04
333-054-0000(T)	1-5-04	Repeal	2-1-04	333-061-0064	10-21-04	Amend	12-1-04
333-054-0010	1-5-04	Amend	2-1-04	333-061-0064(T)	5-1-04	Repeal	8-1-04
333-054-0010(T)	1-5-04	Repeal	2-1-04	333-061-0065	4-9-04	Amend(T)	5-1-04
333-054-0020	1-5-04	Amend	2-1-04	333-061-0065	5-1-04	Amend	8-1-04
333-054-0020(T)	1-5-04	Repeal	2-1-04	333-061-0065(T)	5-1-04	Repeal	8-1-04
333-054-0030	1-5-04	Amend	2-1-04	333-061-0070	11-2-04	Amend	12-1-04
333-054-0030(T)	1-5-04	Repeal	2-1-04	333-061-0071	11-2-04	Amend	12-1-04
333-054-0040	1-5-04	Amend	2-1-04	333-061-0072	11-2-04	Amend	12-1-04
333-054-0040(T)	1-5-04	Repeal	2-1-04	333-061-0073	11-2-04	Amend	12-1-04
333-054-0050	1-5-04	Amend	2-1-04	333-061-0074	11-2-04	Amend	12-1-04
333-054-0050(T)	1-5-04	Repeal	2-1-04	333-061-0085	4-9-04	Amend(T)	5-1-04
333-054-0060	1-5-04	Amend	2-1-04	333-061-0085	5-1-04	Amend	8-1-04
333-054-0060(T)	1-5-04	Repeal	2-1-04	333-061-0085(T)	5-1-04	Repeal	8-1-04
333-054-0070	1-5-04	Amend	2-1-04	333-061-0087	4-9-04	Amend(T)	5-1-04
333-054-0070(T)	1-5-04	Repeal	2-1-04	333-061-0087	5-1-04	Amend	8-1-04
333-054-0090	1-5-04	Repeal	2-1-04	333-061-0087(T)	5-1-04	Repeal	8-1-04
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333-061-0090	10-21-04	Amend	12-1-04	333-061-0270	5-1-04	Amend	8-1-04
333-061-0090(T)	5-1-04	Repeal	8-1-04	333-061-0270	10-21-04	Amend	12-1-04
333-061-0097	10-21-04	Amend	12-1-04	333-061-0270(T)	5-1-04	Repeal	8-1-04
333-061-0205	4-9-04	Amend(T)	5-1-04	333-061-0272	4-9-04	Adopt(T)	5-1-04
333-061-0205	5-1-04	Amend	8-1-04	333-061-0272	5-1-04	Adopt	8-1-04
333-061-0205	10-21-04	Amend	12-1-04	333-061-0272(T)	5-1-04	Repeal	8-1-04
333-061-0205(T)	5-1-04	Repeal	8-1-04	333-061-0290	4-9-04	Amend(T)	5-1-04
333-061-0210	4-9-04	Amend(T)	5-1-04	333-061-0290	5-1-04	Amend	8-1-04
333-061-0210	5-1-04	Amend	8-1-04	333-061-0290	10-21-04	Amend	12-1-04
333-061-0210	10-21-04	Amend	12-1-04	333-061-0290(T)	5-1-04	Repeal	8-1-04
333-061-0210(T)	5-1-04	Repeal	8-1-04	333-063-0005	7-1-04	Repeal	6-1-04
333-061-0215	4-9-04	Amend(T)	5-1-04	333-063-0010	7-1-04	Repeal	6-1-04
333-061-0215	5-1-04	Amend	8-1-04	333-063-0015	7-1-04	Repeal	6-1-04
333-061-0215	10-21-04	Amend	12-1-04	333-063-0020	7-1-04	Repeal	6-1-04
333-061-0215(T)	5-1-04	Repeal	8-1-04	333-063-0025	7-1-04	Repeal	6-1-04
333-061-0220	4-9-04	Amend(T)	5-1-04	333-063-0030	7-1-04	Repeal	6-1-04
333-061-0220	5-1-04	Amend	8-1-04	333-063-0035	7-1-04	Repeal	6-1-04
333-061-0220	10-21-04	Amend	12-1-04	333-063-0040	7-1-04	Repeal	6-1-04
333-061-0220(T)	5-1-04	Repeal	8-1-04	333-063-0045	7-1-04	Repeal	6-1-04
333-061-0225	4-9-04	Amend(T)	5-1-04	333-063-0050	7-1-04	Repeal	6-1-04
333-061-0225	5-1-04	Amend	8-1-04	333-063-0055	7-1-04	Repeal	6-1-04
333-061-0225	10-21-04	Amend	12-1-04	333-063-0060	7-1-04	Repeal	6-1-04
333-061-0225(T)	5-1-04	Repeal	8-1-04	333-063-0065	7-1-04	Repeal	6-1-04
333-061-0228	4-9-04	Adopt(T)	5-1-04	333-063-0070	7-1-04	Repeal	6-1-04
333-061-0228	5-1-04	Adopt	8-1-04	333-063-0075	7-1-04	Repeal	6-1-04
333-061-0228	10-21-04	Amend	12-1-04	333-063-0085	7-1-04	Repeal	6-1-04
333-061-0228(T)	5-1-04	Repeal	8-1-04	333-063-0090	7-1-04	Repeal	6-1-04
333-061-0230	4-9-04	Amend(T)	5-1-04	333-063-0095	7-1-04	Repeal	6-1-04
333-061-0230	5-1-04	Amend	8-1-04	333-063-0100	7-1-04	Repeal	6-1-04
333-061-0230	10-21-04	Amend	12-1-04	333-063-0105	7-1-04	Repeal	6-1-04
333-061-0230(T)	5-1-04	Repeal	8-1-04	333-063-0110	7-1-04	Repeal	6-1-04
333-061-0235	4-9-04	Amend(T)	5-1-04	333-063-0115	7-1-04	Repeal	6-1-04
333-061-0235	5-1-04	Amend	8-1-04	333-063-0120	7-1-04	Repeal	6-1-04
333-061-0235	10-21-04	Amend	12-1-04	333-063-0125	7-1-04	Repeal	6-1-04
333-061-0235(T)	5-1-04	Repeal	8-1-04	333-063-0130	7-1-04	Repeal	6-1-04
333-061-0240	4-9-04	Suspend	5-1-04	333-063-0135	7-1-04	Repeal	6-1-04
333-061-0240	5-1-04	Repeal	8-1-04	333-063-0140	7-1-04	Repeal	6-1-04
333-061-0245	4-9-04	Amend(T)	5-1-04	333-064-0005	12-8-03	Amend	1-1-04
333-061-0245	5-1-04	Amend	8-1-04	333-064-0005(T)	12-8-03	Repeal	1-1-04
333-061-0245	10-21-04	Amend	12-1-04	333-064-0010	12-8-03	Amend	1-1-04
333-061-0245(T)	5-1-04	Repeal	8-1-04	333-064-0010(T)	12-8-03	Repeal	1-1-04
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333-061-0250	5-1-04	Amend	8-1-04	333-064-0015(T)	12-8-03	Repeal	1-1-04
333-061-0250	10-21-04	Amend	12-1-04	333-064-0025	12-8-03	Amend	1-1-04
333-061-0250(T)	5-1-04	Repeal	8-1-04	333-064-0025	7-1-04	Amend	8-1-04
333-061-0255	4-9-04	Suspend	5-1-04	333-064-0025(T)	12-8-03	Repeal	1-1-04
333-061-0255	5-1-04	Repeal	8-1-04	333-064-0030	12-8-03	Amend	1-1-04
333-061-0260	4-9-04	Amend(T)	5-1-04	333-064-0030(T)	12-8-03	Repeal	1-1-04
333-061-0260	5-1-04	Amend	8-1-04	333-064-0035	12-8-03	Amend	1-1-04
333-061-0260	10-21-04	Amend	12-1-04	333-064-0035(T)	12-8-03	Repeal	1-1-04
333-061-0260(T)	5-1-04	Repeal	8-1-04	333-064-0040	12-8-03	Amend	1-1-04
333-061-0265	4-9-04	Amend(T)	5-1-04	333-064-0040(T)	12-8-03	Repeal	1-1-04
333-061-0265	5-1-04	Amend	8-1-04	333-064-0060	12-8-03	Amend	1-1-04
333-061-0265	10-21-04	Amend	12-1-04	333-064-0060(T)	12-8-03	Repeal	1-1-04
333-061-0265(T)	5-1-04	Repeal	8-1-04	333-064-0065	12-8-03	Amend	1-1-04

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333-064-0070	12-8-03	Adopt	1-1-04	333-102-0335	10-8-04	Amend(T)	11-1-04
333-064-0070	7-1-04	Amend	8-1-04	333-102-0340	10-8-04	Amend(T)	11-1-04
333-064-0070(T)	12-8-03	Repeal	1-1-04	333-102-0350	10-8-04	Adopt(T)	11-1-04
333-100-0001	10-8-04	Amend(T)	11-1-04	333-102-0355	10-8-04	Adopt(T)	11-1-04
333-100-0005	10-8-04	Amend(T)	11-1-04	333-102-0360	10-8-04	Adopt(T)	11-1-04
333-100-0057	10-8-04	Adopt(T)	11-1-04	333-102-0365	10-8-04	Adopt(T)	11-1-04
333-100-0060	10-8-04	Amend(T)	11-1-04	333-103-0015	10-8-04	Amend(T)	11-1-04
333-100-0065	10-8-04	Amend(T)	11-1-04	333-105-0001	10-8-04	Amend(T)	11-1-04
333-100-0070	10-8-04	Amend(T)	11-1-04	333-105-0003	10-8-04	Adopt(T)	11-1-04
333-100-0080	10-8-04	Adopt(T)	11-1-04	333-105-0005	10-8-04	Amend(T)	11-1-04
333-101-0001	10-8-04	Amend(T)	11-1-04	333-105-0050	10-8-04	Adopt(T)	11-1-04
333-101-0003	10-8-04	Adopt(T)	11-1-04	333-105-0075	10-8-04	Adopt(T)	11-1-04
333-101-0010	10-8-04	Amend(T)	11-1-04	333-105-0101	10-8-04	Suspend	11-1-04
333-102-0001	10-8-04	Amend(T)	11-1-04	333-105-0105	10-8-04	Suspend	11-1-04
333-102-0005	10-8-04	Amend(T)	11-1-04	333-105-0110	10-8-04	Suspend	11-1-04
333-102-0010	10-8-04	Amend(T)	11-1-04	333-105-0115	10-8-04	Suspend	11-1-04
333-102-0015	10-8-04	Amend(T)	11-1-04	333-105-0120	10-8-04	Suspend	11-1-04
333-102-0020	10-8-04	Amend(T)	11-1-04	333-105-0125	10-8-04	Suspend	11-1-04
333-102-0025	10-8-04	Amend(T)	11-1-04	333-105-0130	10-8-04	Suspend	11-1-04
333-102-0030	10-8-04	Amend(T)	11-1-04	333-105-0135	10-8-04	Suspend	11-1-04
333-102-0035	10-8-04	Amend(T)	11-1-04	333-105-0140	10-8-04	Suspend	11-1-04
333-102-0040	10-8-04	Adopt(T)	11-1-04	333-105-0201	10-8-04	Suspend	11-1-04
333-102-0075	10-8-04	Amend(T)	11-1-04	333-105-0202	10-8-04	Suspend	11-1-04
333-102-0101	10-8-04	Amend(T)	11-1-04	333-105-0205	10-8-04	Suspend	11-1-04
333-102-0103	10-8-04	Amend(T)	11-1-04	333-105-0210	10-8-04	Suspend	11-1-04
333-102-0105	10-8-04	Amend(T)	11-1-04	333-105-0301	10-8-04	Suspend	11-1-04
333-102-0110	10-8-04	Amend(T)	11-1-04	333-105-0305	10-8-04	Suspend	11-1-04
333-102-0120	10-8-04	Amend(T)	11-1-04	333-105-0310	10-8-04	Suspend	11-1-04
333-102-0125	10-8-04	Amend(T)	11-1-04	333-105-0315	10-8-04	Suspend	11-1-04
333-102-0130	10-8-04	Amend(T)	11-1-04	333-105-0320	10-8-04	Suspend	11-1-04
333-102-0135	10-8-04	Amend(T)	11-1-04	333-105-0325	10-8-04	Suspend	11-1-04
333-102-0190	10-8-04	Adopt(T)	11-1-04	333-105-0330	10-8-04	Suspend	11-1-04
333-102-0200	10-8-04	Amend(T)	11-1-04	333-105-0335	10-8-04	Suspend	11-1-04
333-102-0203	10-8-04	Amend(T)	11-1-04	333-105-0420	10-8-04	Adopt(T)	11-1-04
333-102-0225	10-8-04	Suspend	11-1-04	333-105-0430	10-8-04	Adopt(T)	11-1-04
333-102-0235	10-8-04	Amend(T)	11-1-04	333-105-0440	10-8-04	Adopt(T)	11-1-04
333-102-0240	10-8-04	Suspend	11-1-04	333-105-0450	10-8-04	Adopt(T)	11-1-04
333-102-0245	10-8-04	Amend(T)	11-1-04	333-105-0460	10-8-04	Adopt(T)	11-1-04
333-102-0247	10-8-04	Adopt(T)	11-1-04	333-105-0470	10-8-04	Adopt(T)	11-1-04
333-102-0250	10-8-04	Amend(T)	11-1-04	333-105-0480	10-8-04	Adopt(T)	11-1-04
333-102-0255	10-8-04	Amend(T)	11-1-04	333-105-0490	10-8-04	Adopt(T)	11-1-04
333-102-0260	10-8-04	Amend(T)	11-1-04	333-105-0500	10-8-04	Adopt(T)	11-1-04
333-102-0265	10-8-04	Amend(T)	11-1-04	333-105-0510	10-8-04	Adopt(T)	11-1-04
333-102-0270	10-8-04	Amend(T)	11-1-04	333-105-0520	10-8-04	Adopt(T)	11-1-04
333-102-0275	10-8-04	Amend(T)	11-1-04	333-105-0530	10-8-04	Adopt(T)	11-1-04
333-102-0285	10-8-04	Amend(T)	11-1-04	333-105-0540	10-8-04	Adopt(T)	11-1-04
333-102-0287	10-8-04	Suspend	11-1-04	333-105-0550	10-8-04	Adopt(T)	11-1-04
333-102-0290	10-8-04	Amend(T)	11-1-04	333-105-0560	10-8-04	Adopt(T)	11-1-04
333-102-0293	10-8-04	Amend(T)	11-1-04	333-105-0570	10-8-04	Adopt(T)	11-1-04
333-102-0295	10-8-04	Suspend	11-1-04	333-105-0580	10-8-04	Adopt(T)	11-1-04
333-102-0300	10-8-04	Amend(T)	11-1-04	333-105-0590	10-8-04	Adopt(T)	11-1-04
333-102-0305	10-8-04	Amend(T)	11-1-04	333-105-0600	10-8-04	Adopt(T)	11-1-04
333-102-0310	10-8-04	Amend(T)	11-1-04	333-105-0610	10-8-04	Adopt(T)	11-1-04
333-102-0315	10-8-04	Amend(T)	11-1-04	333-105-0620	10-8-04	Adopt(T)	11-1-04
333-102-0327	10-8-04	Amend(T)	11-1-04	333-105-0630	10-8-04	Adopt(T)	11-1-04

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333-105-0650	10-8-04	Adopt(T)	11-1-04	333-116-0290	10-8-04	Amend(T)	11-1-04
333-105-0660	10-8-04	Adopt(T)	11-1-04	333-116-0300	10-8-04	Amend(T)	11-1-04
333-105-0670	10-8-04	Adopt(T)	11-1-04	333-116-0310	10-8-04	Amend(T)	11-1-04
333-105-0680	10-8-04	Adopt(T)	11-1-04	333-116-0320	10-8-04	Amend(T)	11-1-04
333-105-0690	10-8-04	Adopt(T)	11-1-04	333-116-0330	10-8-04	Amend(T)	11-1-04
333-105-0700	10-8-04	Adopt(T)	11-1-04	333-116-0340	10-8-04	Amend(T)	11-1-04
333-105-0710	10-8-04	Adopt(T)	11-1-04	333-116-0350	10-8-04	Amend(T)	11-1-04
333-105-0720	10-8-04	Adopt(T)	11-1-04	333-116-0360	10-8-04	Amend(T)	11-1-04
333-105-0730	10-8-04	Adopt(T)	11-1-04	333-116-0370	10-8-04	Amend(T)	11-1-04
333-105-0740	10-8-04	Adopt(T)	11-1-04	333-116-0380	10-8-04	Amend(T)	11-1-04
333-105-0750	10-8-04	Adopt(T)	11-1-04	333-116-0390	10-8-04	Amend(T)	11-1-04
333-105-0760	10-8-04	Adopt(T)	11-1-04	333-116-0410	10-8-04	Amend(T)	11-1-04
333-106-0005	10-8-04	Amend(T)	11-1-04	333-116-0420	10-8-04	Amend(T)	11-1-04
333-106-0035	10-8-04	Amend(T)	11-1-04	333-116-0430	10-8-04	Amend(T)	11-1-04
333-106-0045	10-8-04	Amend(T)	11-1-04	333-116-0440	10-8-04	Amend(T)	11-1-04
333-106-0055	10-8-04	Amend(T)	11-1-04	333-116-0450	10-8-04	Amend(T)	11-1-04
333-106-0101	10-8-04	Amend(T)	11-1-04	333-116-0460	10-8-04	Amend(T)	11-1-04
333-106-0105	10-8-04	Amend(T)	11-1-04	333-116-0470	10-8-04	Amend(T)	11-1-04
333-106-0210	10-8-04	Amend(T)	11-1-04	333-116-0480	10-8-04	Amend(T)	11-1-04
333-106-0220	10-8-04	Amend(T)	11-1-04	333-116-0490	10-8-04	Amend(T)	11-1-04
333-106-0325	10-8-04	Amend(T)	11-1-04	333-116-0495	10-8-04	Adopt(T)	11-1-04
333-106-0575	10-8-04	Amend(T)	11-1-04	333-116-0510	10-8-04	Suspend	11-1-04
333-106-0700	10-8-04	Amend(T)	11-1-04	333-116-0515	10-8-04	Adopt(T)	11-1-04
333-106-0710	10-8-04	Amend(T)	11-1-04	333-116-0525	10-8-04	Adopt(T)	11-1-04
333-106-0720	10-8-04	Amend(T)	11-1-04	333-116-0530	10-8-04	Amend(T)	11-1-04
333-106-0730	10-8-04	Amend(T)	11-1-04	333-116-0540	10-8-04	Amend(T)	11-1-04
333-106-0750	10-8-04	Adopt(T)	11-1-04	333-116-0560	10-8-04	Amend(T)	11-1-04
333-111-0010	10-8-04	Amend(T)	11-1-04	333-116-0570	10-8-04	Amend(T)	11-1-04
333-116-0010	10-8-04	Amend(T)	11-1-04	333-116-0573	10-8-04	Adopt(T)	11-1-04
333-116-0020	10-8-04	Amend(T)	11-1-04	333-116-0577	10-8-04	Adopt(T)	11-1-04
333-116-0025	10-8-04	Adopt(T)	11-1-04	333-116-0580	10-8-04	Amend(T)	11-1-04
333-116-0035	10-8-04	Adopt(T)	11-1-04	333-116-0583	10-8-04	Adopt(T)	11-1-04
333-116-0040	10-8-04	Amend(T)	11-1-04	333-116-0585	10-8-04	Adopt(T)	11-1-04
333-116-0050	10-8-04	Amend(T)	11-1-04	333-116-0587	10-8-04	Adopt(T)	11-1-04
333-116-0055	10-8-04	Adopt(T)	11-1-04	333-116-0590	10-8-04	Amend(T)	11-1-04
333-116-0057	10-8-04	Adopt(T)	11-1-04	333-116-0600	10-8-04	Amend(T)	11-1-04
333-116-0059	10-8-04	Adopt(T)	11-1-04	333-116-0605	10-8-04	Adopt(T)	11-1-04
333-116-0070	10-8-04	Amend(T)	11-1-04	333-116-0610	10-8-04	Amend(T)	11-1-04
333-116-0080	10-8-04	Amend(T)	11-1-04	333-116-0640	10-8-04	Amend(T)	11-1-04
333-116-0090	10-8-04	Amend(T)	11-1-04	333-116-0660	10-8-04	Amend(T)	11-1-04
333-116-0100	10-8-04	Amend(T)	11-1-04	333-116-0670	10-8-04	Amend(T)	11-1-04
333-116-0105	10-8-04	Adopt(T)	11-1-04	333-116-0680	10-8-04	Amend(T)	11-1-04
333-116-0107	10-8-04	Adopt(T)	11-1-04	333-116-0720	10-8-04	Amend(T)	11-1-04
333-116-0120	10-8-04	Amend(T)	11-1-04	333-116-0730	10-8-04	Amend(T)	11-1-04
333-116-0125	10-8-04	Amend(T)	11-1-04	333-116-0830	10-8-04	Amend(T)	11-1-04
333-116-0140	10-8-04	Amend(T)	11-1-04	333-116-0905	10-8-04	Adopt(T)	11-1-04
333-116-0150	10-8-04	Amend(T)	11-1-04	333-116-0910	10-8-04	Adopt(T)	11-1-04
333-116-0160	10-8-04	Amend(T)	11-1-04	333-116-0915	10-8-04	Adopt(T)	11-1-04
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333-116-0180	10-8-04	Amend(T)	11-1-04	333-118-0050	10-8-04	Amend(T)	11-1-04
333-116-0190	10-8-04	Amend(T)	11-1-04	333-118-0060	10-8-04	Amend(T)	11-1-04
333-116-0200	10-8-04	Amend(T)	11-1-04	333-118-0070	10-8-04	Amend(T)	11-1-04
333-116-0250	10-8-04	Amend(T)	11-1-04	333-118-0080	10-8-04	Amend(T)	11-1-04
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333-118-0120	10-8-04	Amend(T)	11-1-04	333-157-0045(T)	4-9-04	Repeal	5-1-04
333-118-0130	10-8-04	Amend(T)	11-1-04	333-157-0050	2-13-04	Suspend	3-1-04
333-118-0140	10-8-04	Amend(T)	11-1-04	333-157-0050	4-9-04	Repeal	5-1-04
333-118-0150	10-8-04	Amend(T)	11-1-04	333-157-0060	2-13-04	Suspend	3-1-04
333-118-0160	10-8-04	Amend(T)	11-1-04	333-157-0060	4-9-04	Repeal	5-1-04
333-118-0170	10-8-04	Amend(T)	11-1-04	333-157-0090	2-13-04	Suspend	3-1-04
333-118-0180	10-8-04	Amend(T)	11-1-04	333-157-0090	4-9-04	Repeal	5-1-04
333-118-0190	10-8-04	Amend(T)	11-1-04	333-162-0300	2-13-04	Amend(T)	3-1-04
333-118-0200	10-8-04	Amend(T)	11-1-04	333-162-0300	4-9-04	Amend	5-1-04
333-118-0800	10-8-04	Adopt(T)	11-1-04	333-162-0300(T)	4-9-04	Repeal	5-1-04
333-119-0030	10-8-04	Amend(T)	11-1-04	333-162-0930	2-13-04	Amend(T)	3-1-04
333-119-0040	10-8-04	Amend(T)	11-1-04	333-162-0930	4-9-04	Amend	5-1-04
333-119-0080	10-8-04	Amend(T)	11-1-04	333-162-0930(T)	4-9-04	Repeal	5-1-04
333-119-0090	10-8-04	Amend(T)	11-1-04	333-162-1005	2-13-04	Adopt(T)	3-1-04
333-119-0100	10-8-04	Amend(T)	11-1-04	333-162-1005	4-9-04	Adopt	5-1-04
333-119-0120	10-8-04	Amend(T)	11-1-04	333-162-1005(T)	4-9-04	Repeal	5-1-04
333-120-0015	10-8-04	Adopt(T)	11-1-04	333-170-0010	2-13-04	Amend(T)	3-1-04
333-120-0017	10-8-04	Adopt(T)	11-1-04	333-170-0010	4-9-04	Amend	5-1-04
333-120-0100	10-8-04	Amend(T)	11-1-04	333-170-0010(T)	4-9-04	Repeal	5-1-04
333-120-0110	10-8-04	Amend(T)	11-1-04	333-170-0020	2-13-04	Amend(T)	3-1-04
333-120-0130	10-8-04	Amend(T)	11-1-04	333-170-0020	4-9-04	Amend	5-1-04
333-120-0170	10-8-04	Amend(T)	11-1-04	333-170-0020(T)	4-9-04	Repeal	5-1-04
333-120-0180	10-8-04	Amend(T)	11-1-04	333-170-0030	2-13-04	Amend(T)	3-1-04
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333-120-0200	10-8-04	Amend(T)	11-1-04	333-170-0030(T)	4-9-04	Repeal	5-1-04
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333-120-0215	10-8-04	Adopt(T)	11-1-04	333-170-0040	4-9-04	Amend	5-1-04
333-120-0220	10-8-04	Amend(T)	11-1-04	333-170-0040(T)	4-9-04	Repeal	5-1-04
333-120-0230	10-8-04	Amend(T)	11-1-04	333-170-0050	2-13-04	Amend(T)	3-1-04
333-120-0240	10-8-04	Amend(T)	11-1-04	333-170-0050	4-9-04	Amend	5-1-04
333-120-0250	10-8-04	Amend(T)	11-1-04	333-170-0050(T)	4-9-04	Repeal	5-1-04
333-120-0320	10-8-04	Amend(T)	11-1-04	333-170-0060	2-13-04	Amend(T)	3-1-04
333-120-0400	10-8-04	Amend(T)	11-1-04	333-170-0060	4-9-04	Amend	5-1-04
333-120-0420	10-8-04	Amend(T)	11-1-04	333-170-0060(T)	4-9-04	Repeal	5-1-04
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333-120-0560	10-8-04	Amend(T)	11-1-04	333-170-0090	2-13-04	Amend(T)	3-1-04
333-120-0600	10-8-04	Amend(T)	11-1-04	333-170-0090	4-9-04	Amend	5-1-04
333-120-0610	10-8-04	Amend(T)	11-1-04	333-170-0090(T)	4-9-04	Repeal	5-1-04
333-120-0640	10-8-04	Amend(T)	11-1-04	333-170-0100	2-13-04	Amend(T)	3-1-04
333-120-0650	10-8-04	Amend(T)	11-1-04	333-170-0100	4-9-04	Amend	5-1-04
333-120-0660	10-8-04	Amend(T)	11-1-04	333-170-0100(T)	4-9-04	Repeal	5-1-04
333-120-0670	10-8-04	Amend(T)	11-1-04	333-170-0120	2-13-04	Amend(T)	3-1-04
333-120-0680	10-8-04	Amend(T)	11-1-04	333-170-0120	4-9-04	Amend	5-1-04
333-120-0700	10-8-04	Amend(T)	11-1-04	333-170-0120(T)	4-9-04	Repeal	5-1-04
333-120-0710	10-8-04	Amend(T)	11-1-04	333-170-0130	2-13-04	Amend(T)	3-1-04
333-120-0720	10-8-04	Amend(T)	11-1-04	333-170-0130	4-9-04	Amend	5-1-04
333-150-0000	2-13-04	Amend(T)	3-1-04	333-170-0130(T)	4-9-04	Repeal	5-1-04
333-150-0000	4-9-04	Amend	5-1-04	333-175-0000	6-18-04	Repeal	8-1-04
333-150-0000(T)	4-9-04	Repeal	5-1-04	333-175-0001	6-18-04	Adopt	8-1-04

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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
333-175-0030	6-18-04	Repeal	8-1-04	333-536-0060(T)	6-25-04	Repeal	8-1-04
333-175-0031	6-18-04	Adopt	8-1-04	333-536-0065	2-6-04	Adopt(T)	3-1-04
333-175-0041	6-18-04	Adopt	8-1-04	333-536-0065	6-25-04	Adopt	8-1-04
333-175-0051	6-18-04	Adopt	8-1-04	333-536-0065(T)	6-25-04	Repeal	8-1-04
333-175-0061	6-18-04	Adopt	8-1-04	333-536-0070	2-6-04	Adopt(T)	3-1-04
333-175-0071	6-18-04	Adopt	8-1-04	333-536-0070	6-25-04	Adopt	8-1-04
333-175-0081	6-18-04	Adopt	8-1-04	333-536-0070(T)	6-25-04	Repeal	8-1-04
333-175-0091	6-18-04	Adopt	8-1-04	333-536-0075	2-6-04	Adopt(T)	3-1-04
333-175-0101	6-18-04	Adopt	8-1-04	333-536-0075	6-25-04	Adopt	8-1-04
333-175-0111	6-18-04	Adopt	8-1-04	333-536-0075(T)	6-25-04	Repeal	8-1-04
333-505-0007	2-6-04	Amend	3-1-04	333-536-0080	2-6-04	Adopt(T)	3-1-04
333-535-0040	3-17-04	Suspend	5-1-04	333-536-0080	6-25-04	Adopt	8-1-04
333-535-0040	5-26-04	Repeal	7-1-04	333-536-0080(T)	6-25-04	Repeal	8-1-04
333-535-0041	3-17-04	Adopt(T)	5-1-04	333-536-0085	2-6-04	Adopt(T)	3-1-04
333-535-0041	5-26-04	Adopt	7-1-04	333-536-0085	6-25-04	Adopt	8-1-04
333-535-0041(T)	5-26-04	Repeal	7-1-04	333-536-0085(T)	6-25-04	Repeal	8-1-04
333-535-0060	3-17-04	Repeal	5-1-04	333-536-0090	2-6-04	Adopt(T)	3-1-04
333-535-0061	3-17-04	Adopt	5-1-04	333-536-0090	6-25-04	Adopt	8-1-04
333-536-0000	2-6-04	Adopt(T)	3-1-04	333-536-0090(T)	6-25-04	Repeal	8-1-04
333-536-0000	6-25-04	Adopt	8-1-04	333-536-0095	2-6-04	Adopt(T)	3-1-04
333-536-0000(T)	6-25-04	Repeal	8-1-04	333-536-0095	6-25-04	Adopt	8-1-04
333-536-0005	2-6-04	Adopt(T)	3-1-04	333-536-0095(T)	6-25-04	Repeal	8-1-04
333-536-0005	6-25-04	Adopt	8-1-04	333-536-0100	2-6-04	Adopt(T)	3-1-04
333-536-0005(T)	6-25-04	Repeal	8-1-04	333-536-0100	6-25-04	Adopt	8-1-04
333-536-0010	2-6-04	Adopt(T)	3-1-04	333-536-0100(T)	6-25-04	Repeal	8-1-04
333-536-0010	6-25-04	Amend	8-1-04	333-550-0010	9-23-04	Amend	11-1-04
333-536-0010(T)	6-25-04	Repeal	8-1-04	333-560-0010	1-16-04	Amend	3-1-04
333-536-0015	2-6-04	Adopt(T)	3-1-04	333-560-0110	8-19-04	Amend	10-1-04
333-536-0015	6-25-04	Adopt	8-1-04	333-560-0120	8-19-04	Amend	10-1-04
333-536-0015(T)	6-25-04	Repeal	8-1-04	333-560-0140	9-23-04	Adopt	11-1-04
333-536-0020	2-6-04	Adopt(T)	3-1-04	333-560-0150	9-23-04	Adopt	11-1-04
333-536-0020	6-25-04	Adopt	8-1-04	333-590-0040	9-23-04	Amend	11-1-04
333-536-0020(T)	6-25-04	Repeal	8-1-04	333-635-0000	1-16-04	Repeal	3-1-04
333-536-0025	2-6-04	Adopt(T)	3-1-04	333-635-0010	1-16-04	Repeal	3-1-04
333-536-0025	6-25-04	Adopt	8-1-04	333-635-0020	1-16-04	Repeal	3-1-04
333-536-0025(T)	6-25-04	Repeal	8-1-04	333-635-0030	1-16-04	Repeal	3-1-04
333-536-0030	2-6-04	Adopt(T)	3-1-04	333-675-0000	3-11-04	Amend	4-1-04
333-536-0030	6-25-04	Adopt	8-1-04	333-675-0010	3-11-04	Am. & Ren.	4-1-04
333-536-0030(T)	6-25-04	Repeal	8-1-04	333-675-0020	3-11-04	Amend	4-1-04
333-536-0035	2-6-04	Adopt(T)	3-1-04	333-675-0030	3-11-04	Amend	4-1-04
333-536-0035	6-25-04	Adopt	8-1-04	333-675-0040	3-11-04	Amend	4-1-04
333-536-0035(T)	6-25-04	Repeal	8-1-04	334-010-0005	2-23-04	Amend	4-1-04
333-536-0040	2-6-04	Adopt(T)	3-1-04	334-010-0010	2-23-04	Amend	4-1-04
333-536-0040	6-25-04	Adopt	8-1-04	334-010-0015	2-23-04	Amend	4-1-04
333-536-0040(T)	6-25-04	Repeal	8-1-04	334-010-0017	2-23-04	Amend	4-1-04
333-536-0045	2-6-04	Adopt(T)	3-1-04	334-010-0025	2-23-04	Amend	4-1-04
333-536-0045	6-25-04	Adopt	8-1-04	334-010-0033	1-1-05	Amend	12-1-04
333-536-0045(T)	6-25-04	Repeal	8-1-04	334-010-0050	2-23-04	Amend	4-1-04
333-536-0050	2-6-04	Adopt(T)	3-1-04	334-010-0050	3-16-04	Amend(T)	5-1-04
333-536-0050	6-25-04	Amend	8-1-04	334-010-0050	10-22-04	Amend(T)	12-1-04
333-536-0050(T)	6-25-04	Repeal	8-1-04	335-005-0015	5-26-04	Amend	7-1-04
333-536-0055	2-6-04	Adopt(T)	3-1-04	335-005-0025	2-6-04	Amend	3-1-04

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335-010-0050	5-26-04	Adopt	7-1-04	340-011-0103	12-12-03	Am. & Ren.	1-1-04
335-010-0060	5-26-04	Adopt	7-1-04	340-011-0106	12-12-03	Renumber	1-1-04
335-010-0070	5-26-04	Adopt	7-1-04	340-011-0107	12-12-03	Am. & Ren.	1-1-04
335-010-0080	5-26-04	Adopt	7-1-04	340-011-0122	12-12-03	Renumber	1-1-04
335-070-0030	2-6-04	Amend	3-1-04	340-011-0124	12-12-03	Am. & Ren.	1-1-04
335-070-0030	5-26-04	Amend	7-1-04	340-011-0131	12-12-03	Am. & Ren.	1-1-04
335-070-0060	2-6-04	Amend	3-1-04	340-011-0132	12-12-03	Am. & Ren.	1-1-04
335-070-0060	5-26-04	Amend	7-1-04	340-011-0136	12-12-03	Am. & Ren.	1-1-04
335-095-0020	2-6-04	Amend	3-1-04	340-011-0520	12-12-03	Adopt	1-1-04
335-095-0020	5-26-04	Amend	7-1-04	340-011-0535	12-12-03	Adopt	1-1-04
335-095-0020	10-13-04	Amend(T)	11-1-04	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	340-016-0210	9-17-04	Adopt	11-1-04
338-001-0008	7-1-04	Repeal	8-1-04	340-016-0220	9-17-04	Adopt	11-1-04
338-001-0010	7-1-04	Repeal	8-1-04	340-016-0230	9-17-04	Adopt	11-1-04
338-001-0015	7-1-04	Repeal	8-1-04	340-016-0240	9-17-04	Adopt	11-1-04
338-005-0000	7-1-04	Repeal	8-1-04	340-016-0250	9-17-04	Adopt	11-1-04
338-005-0010	7-1-04	Repeal	8-1-04	340-016-0260	9-17-04	Adopt	11-1-04
338-005-0020	7-1-04	Amend	8-1-04	340-035-0035	6-11-04	Amend	7-1-04
338-005-0030	7-1-04	Amend	8-1-04	340-035-0110	6-11-04	Adopt	7-1-04
338-010-0015	3-1-04	Amend(T)	4-1-04	340-041-0001	12-9-03	Amend	1-1-04
338-010-0015	7-1-04	Amend	8-1-04	340-041-0002	12-9-03	Adopt	1-1-04
338-010-0017	7-1-04	Amend	8-1-04	340-041-0002	5-28-04	Amend	7-1-04
338-010-0025	3-1-04	Amend(T)	4-1-04	340-041-0004	12-9-03	Adopt	1-1-04
338-010-0025	7-1-04	Amend	8-1-04	340-041-0006	12-9-03	Repeal	1-1-04
338-010-0030	3-1-04	Amend(T)	4-1-04	340-041-0007	12-9-03	Adopt	1-1-04
338-010-0030	7-1-04	Amend	8-1-04	340-041-0009	12-9-03	Adopt	1-1-04
338-010-0033	7-1-04	Amend	8-1-04	340-041-0016	12-9-03	Adopt	1-1-04
338-010-0035	3-1-04	Amend(T)	4-1-04	340-041-0021	12-9-03	Adopt	1-1-04
338-010-0035	7-1-04	Amend	8-1-04	340-041-0026	12-9-03	Repeal	1-1-04
338-010-0038	7-1-04	Amend	8-1-04	340-041-0027	12-9-03	Am. & Ren.	1-1-04
338-010-0050	3-1-04	Amend(T)	4-1-04	340-041-0028	12-9-03	Adopt	1-1-04
338-010-0050	7-1-04	Amend	8-1-04	340-041-0031	12-9-03	Adopt	1-1-04
338-010-0060	7-1-04	Repeal	8-1-04	340-041-0032	12-9-03	Adopt	1-1-04
338-020-0000	7-1-04	Amend	8-1-04	340-041-0033	12-9-03	Adopt	1-1-04
338-020-0030	7-1-04	Amend	8-1-04	340-041-0033	5-28-04	Amend	7-1-04
338-020-0050	7-1-04	Amend	8-1-04	340-041-0034	12-9-03	Repeal	1-1-04
338-020-0060	7-1-04	Repeal	8-1-04	340-041-0036	12-9-03	Adopt	1-1-04
338-030-0000	7-1-04	Repeal	8-1-04	340-041-0046	12-9-03	Adopt	1-1-04
338-030-0010	7-1-04	Repeal	8-1-04	340-041-0053	12-9-03	Adopt	1-1-04
338-030-0020	7-1-04	Amend	8-1-04	340-041-0057	12-9-03	Adopt	1-1-04
338-030-0030	7-1-04	Repeal	8-1-04	340-041-0061	12-9-03	Adopt	1-1-04
338-030-0040	7-1-04	Repeal	8-1-04	340-041-0061	5-28-04	Amend	7-1-04
338-030-0050	7-1-04	Repeal	8-1-04	340-041-0101	12-9-03	Adopt	1-1-04
339-005-0000	6-3-04	Amend	7-1-04	340-041-0103	12-9-03	Adopt	1-1-04
339-010-0023	6-3-04	Amend	7-1-04	340-041-0104	12-9-03	Adopt	1-1-04
339-020-0030	6-3-04	Amend	7-1-04	340-041-0120	12-9-03	Repeal	1-1-04
339-020-0050	6-3-04	Amend	7-1-04	340-041-0121	12-9-03	Adopt	1-1-04
340-011-0005	12-12-03	Amend	1-1-04	340-041-0122	12-9-03	Adopt	1-1-04
340-011-0035	12-12-03	Am. & Ren.	1-1-04	340-041-0124	12-9-03	Adopt	1-1-04
340-011-0097	12-12-03	Am. & Ren.	1-1-04	340-041-0130	12-9-03	Adopt	1-1-04

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340-041-0135	12-9-03	Adopt	1-1-04	340-041-0315	12-9-03	Adopt	1-1-04
340-041-0140	12-9-03	Adopt	1-1-04	340-041-0320	12-9-03	Adopt	1-1-04
340-041-0143	12-9-03	Adopt	1-1-04	340-041-0322	12-9-03	Repeal	1-1-04
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	340-041-0485	12-9-03	Repeal	1-1-04
340-041-0215	12-9-03	Repeal	1-1-04	340-041-0495	12-9-03	Repeal	1-1-04
340-041-0220	12-9-03	Adopt	1-1-04	340-041-0522	12-9-03	Repeal	1-1-04
340-041-0224	12-9-03	Adopt	1-1-04	340-041-0525	12-9-03	Repeal	1-1-04
340-041-0225	12-9-03	Adopt	1-1-04	340-041-0535	12-9-03	Repeal	1-1-04
340-041-0230	12-9-03	Adopt	1-1-04	340-041-0562	12-9-03	Repeal	1-1-04
340-041-0234	12-9-03	Adopt	1-1-04	340-041-0565	12-9-03	Repeal	1-1-04
340-041-0235	12-9-03	Adopt	1-1-04	340-041-0575	12-9-03	Repeal	1-1-04
340-041-0242	12-9-03	Repeal	1-1-04	340-041-0580	12-9-03	Repeal	1-1-04
340-041-0245	12-9-03	Repeal	1-1-04	340-041-0602	12-9-03	Repeal	1-1-04
340-041-0250	12-9-03	Adopt	1-1-04	340-041-0605	12-9-03	Repeal	1-1-04
340-041-0254	12-9-03	Adopt	1-1-04	340-041-0615	12-9-03	Repeal	1-1-04
340-041-0255	12-9-03	Repeal	1-1-04	340-041-0642	12-9-03	Repeal	1-1-04
340-041-0256	12-9-03	Adopt	1-1-04	340-041-0645	12-9-03	Repeal	1-1-04
340-041-0260	12-9-03	Adopt	1-1-04	340-041-0655	12-9-03	Repeal	1-1-04
340-041-0264	12-9-03	Adopt	1-1-04	340-041-0682	12-9-03	Repeal	1-1-04
340-041-0265	12-9-03	Adopt	1-1-04	340-041-0765	12-9-03	Repeal	1-1-04
340-041-0270	12-9-03	Repeal	1-1-04	340-041-0775	12-9-03	Repeal	1-1-04
340-041-0271	12-9-03	Adopt	1-1-04	340-041-0802	12-9-03	Repeal	1-1-04
340-041-0274	12-9-03	Adopt	1-1-04	340-041-0805	12-9-03	Repeal	1-1-04
340-041-0275	12-9-03	Adopt	1-1-04	340-041-0815	12-9-03	Repeal	1-1-04
340-041-0282	12-9-03	Repeal	1-1-04	340-041-0842	12-9-03	Repeal	1-1-04
340-041-0285	12-9-03	Repeal	1-1-04	340-041-0845	12-9-03	Repeal	1-1-04
340-041-0286	12-9-03	Adopt	1-1-04	340-041-0855	12-9-03	Repeal	1-1-04
340-041-0289	12-9-03	Adopt	1-1-04	340-041-0882	12-9-03	Repeal	1-1-04
340-041-0290	12-9-03	Adopt	1-1-04	340-041-0885	12-9-03	Repeal	1-1-04
340-041-0295	12-9-03	Repeal	1-1-04	340-041-0895	12-9-03	Repeal	1-1-04
340-041-0300	12-9-03	Adopt	1-1-04	340-041-0922	12-9-03	Repeal	1-1-04
340-041-0304	12-9-03	Adopt	1-1-04	340-041-0925	12-9-03	Repeal	1-1-04
340-041-0305	12-9-03	Adopt	1-1-04	340-041-0935	12-9-03	Repeal	1-1-04
340-041-0310	12-9-03	Adopt	1-1-04	340-041-0962	12-9-03	Repeal	1-1-04
				340-041-0965	12-9-03	Repeal	1-1-04

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340-041-0975	12-9-03	Repeal	1-1-04	350-120-0040	4-1-04	Amend	4-1-04
340-045-0010	8-3-04	Amend	9-1-04	350-120-0050	4-1-04	Adopt	4-1-04
340-045-0015	8-3-04	Amend	9-1-04	409-030-0000	9-24-04	Adopt	11-1-04
340-045-0070	8-3-04	Amend	9-1-04	409-030-0005	9-24-04	Adopt	11-1-04
340-045-0075	8-3-04	Amend	9-1-04	409-030-0010	9-24-04	Adopt	11-1-04
340-048-0005	4-15-04	Amend	5-1-04	409-030-0020	9-24-04	Adopt	11-1-04
340-048-0010	4-15-04	Amend	5-1-04	409-030-0030	9-24-04	Adopt	11-1-04
340-048-0015	4-15-04	Amend	5-1-04	409-030-0040	9-24-04	Adopt	11-1-04
340-048-0020	4-15-04	Amend	5-1-04	409-030-0050	9-24-04	Adopt	11-1-04
340-048-0024	4-15-04	Am. & Ren.	5-1-04	410-007-0000	3-1-04	Repeal	4-1-04
340-048-0025	4-15-04	Am. & Ren.	5-1-04	410-007-0010	3-1-04	Repeal	4-1-04
340-048-0025	4-15-04	Am. & Ren.	5-1-04	410-007-0020	3-1-04	Repeal	4-1-04
340-048-0027	4-15-04	Adopt	5-1-04	410-007-0030	3-1-04	Repeal	4-1-04
340-048-0030	4-15-04	Am. & Ren.	5-1-04	410-007-0040	3-1-04	Repeal	4-1-04
340-048-0035	4-15-04	Repeal	5-1-04	410-007-0050	3-1-04	Repeal	4-1-04
340-048-0037	4-15-04	Adopt	5-1-04	410-007-0060	3-1-04	Repeal	4-1-04
340-048-0040	4-15-04	Am. & Ren.	5-1-04	410-007-0070	3-1-04	Repeal	4-1-04
340-048-0200	4-15-04	Am. & Ren.	5-1-04	410-007-0080	3-1-04	Repeal	4-1-04
340-200-0040	12-12-03	Amend	1-1-04	410-007-0200	3-1-04	Adopt	4-1-04
340-200-0040	4-14-04	Amend	5-1-04	410-007-0210	3-1-04	Adopt	4-1-04
340-214-0400	12-12-03	Adopt	1-1-04	410-007-0210	10-1-04	Amend(T)	11-1-04
340-214-0410	12-12-03	Adopt	1-1-04	410-007-0220	3-1-04	Adopt	4-1-04
340-214-0420	12-12-03	Adopt	1-1-04	410-007-0220	10-1-04	Amend(T)	11-1-04
340-214-0430	12-12-03	Adopt	1-1-04	410-007-0230	3-1-04	Adopt	4-1-04
340-220-0030	7-29-04	Amend	9-1-04	410-007-0230	10-1-04	Amend(T)	11-1-04
340-220-0040	7-29-04	Amend	9-1-04	410-007-0230	11-4-04	Amend(T)	12-1-04
340-220-0050	7-29-04	Amend	9-1-04	410-007-0230(T)	11-4-04	Suspend	12-1-04
340-224-0010	4-14-04	Amend	5-1-04	410-007-0240	3-1-04	Adopt	4-1-04
340-224-0030	4-14-04	Amend	5-1-04	410-007-0250	3-1-04	Adopt	4-1-04
340-224-0050	4-14-04	Amend	5-1-04	410-007-0260	3-1-04	Adopt	4-1-04
340-224-0070	4-14-04	Amend	5-1-04	410-007-0270	3-1-04	Adopt	4-1-04
340-224-0080	4-14-04	Amend	5-1-04	410-007-0270	10-1-04	Amend(T)	11-1-04
340-225-0020	4-14-04	Amend	5-1-04	410-007-0280	3-1-04	Adopt	4-1-04
340-225-0050	4-14-04	Amend	5-1-04	410-007-0290	3-1-04	Adopt	4-1-04
340-225-0090	4-14-04	Amend	5-1-04	410-007-0300	3-1-04	Adopt	4-1-04
340-228-0400	12-12-03	Adopt	1-1-04	410-007-0310	3-1-04	Adopt	4-1-04
340-228-0410	12-12-03	Adopt	1-1-04	410-007-0310	10-1-04	Amend(T)	11-1-04
340-228-0420	12-12-03	Adopt	1-1-04	410-007-0320	3-1-04	Adopt	4-1-04
340-228-0430	12-12-03	Adopt	1-1-04	410-007-0330	3-1-04	Adopt	4-1-04
340-228-0440	12-12-03	Adopt	1-1-04	410-007-0340	3-1-04	Adopt	4-1-04
340-228-0450	12-12-03	Adopt	1-1-04	410-007-0340	10-1-04	Amend(T)	11-1-04
340-228-0460	12-12-03	Adopt	1-1-04	410-007-0350	3-1-04	Adopt	4-1-04
340-228-0470	12-12-03	Adopt	1-1-04	410-007-0360	3-1-04	Adopt	4-1-04
340-228-0480	12-12-03	Adopt	1-1-04	410-007-0370	3-1-04	Adopt	4-1-04
340-228-0490	12-12-03	Adopt	1-1-04	410-007-0380	3-1-04	Adopt	4-1-04
340-228-0500	12-12-03	Adopt	1-1-04	410-009-0000	5-26-04	Repeal	7-1-04
340-228-0510	12-12-03	Adopt	1-1-04	410-009-0005	5-26-04	Repeal	7-1-04
340-228-0520	12-12-03	Adopt	1-1-04	410-009-0010	5-26-04	Repeal	7-1-04
340-228-0530	12-12-03	Adopt	1-1-04	410-009-0015	5-26-04	Repeal	7-1-04
350-011-0006	6-1-04	Amend	6-1-04	410-009-0020	5-26-04	Repeal	7-1-04
350-012-0006	6-1-04	Amend	6-1-04	410-009-0025	5-26-04	Repeal	7-1-04
350-120-0010	4-1-04	Amend	4-1-04	410-009-0030	5-26-04	Repeal	7-1-04
350-120-0015	4-1-04	Adopt	4-1-04	410-009-0035	5-26-04	Repeal	7-1-04
350-120-0020	4-1-04	Amend	4-1-04	410-009-0040	5-26-04	Repeal	7-1-04
350-120-0025	4-1-04	Adopt	4-1-04	410-009-0080	12-1-04	Adopt	12-1-04
350-120-0030	4-1-04	Amend	4-1-04	410-009-0150	12-1-04	Adopt	12-1-04

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410-050-0100	10-28-04	Adopt	12-1-04	410-050-0750	11-9-04	Adopt(T)	12-1-04
410-050-0110	5-1-04	Adopt(T)	6-1-04	410-050-0760	11-9-04	Adopt(T)	12-1-04
410-050-0110	10-28-04	Adopt	12-1-04	410-050-0770	11-9-04	Adopt(T)	12-1-04
410-050-0120	5-1-04	Adopt(T)	6-1-04	410-050-0780	11-9-04	Adopt(T)	12-1-04
410-050-0120	10-28-04	Adopt	12-1-04	410-050-0790	11-9-04	Adopt(T)	12-1-04
410-050-0130	5-1-04	Adopt(T)	6-1-04	410-050-0800	11-9-04	Adopt(T)	12-1-04
410-050-0130	10-28-04	Adopt	12-1-04	410-050-0810	11-9-04	Adopt(T)	12-1-04
410-050-0140	5-1-04	Adopt(T)	6-1-04	410-050-0820	11-9-04	Adopt(T)	12-1-04
410-050-0140	10-28-04	Adopt	12-1-04	410-050-0830	11-9-04	Adopt(T)	12-1-04
410-050-0150	5-1-04	Adopt(T)	6-1-04	410-050-0840	11-9-04	Adopt(T)	12-1-04
410-050-0150	10-28-04	Adopt	12-1-04	410-050-0850	11-9-04	Adopt(T)	12-1-04
410-050-0160	5-1-04	Adopt(T)	6-1-04	410-050-0860	11-9-04	Adopt(T)	12-1-04
410-050-0160	10-28-04	Adopt	12-1-04	410-050-0870	11-9-04	Adopt(T)	12-1-04
410-050-0170	5-1-04	Adopt(T)	6-1-04	410-120-0000	10-1-04	Amend	10-1-04
410-050-0170	10-28-04	Adopt	12-1-04	410-120-1140	10-1-04	Amend	10-1-04
410-050-0180	5-1-04	Adopt(T)	6-1-04	410-120-1160	4-1-04	Amend	4-1-04
410-050-0180	10-28-04	Adopt	12-1-04	410-120-1160	10-1-04	Amend	10-1-04
410-050-0190	5-1-04	Adopt(T)	6-1-04	410-120-1195	1-1-04	Amend	2-1-04
410-050-0190	10-28-04	Adopt	12-1-04	410-120-1200	4-1-04	Amend	4-1-04
410-050-0200	5-1-04	Adopt(T)	6-1-04	410-120-1210	8-1-04	Amend	9-1-04
410-050-0200	10-28-04	Adopt	12-1-04	410-120-1230	6-19-04	Amend(T)	7-1-04
410-050-0210	5-1-04	Adopt(T)	6-1-04	410-120-1230	8-1-04	Amend	9-1-04
410-050-0210	10-28-04	Adopt	12-1-04	410-120-1260	10-1-04	Amend	10-1-04
410-050-0220	5-1-04	Adopt(T)	6-1-04	410-120-1280	4-1-04	Amend	4-1-04
410-050-0220	10-28-04	Adopt	12-1-04	410-120-1295	3-22-04	Amend	5-1-04
410-050-0230	5-1-04	Adopt(T)	6-1-04	410-120-1295	3-23-04	Amend(T)	5-1-04
410-050-0230	10-28-04	Adopt	12-1-04	410-120-1295	6-1-04	Amend	7-1-04
410-050-0240	5-1-04	Adopt(T)	6-1-04	410-120-1295	10-1-04	Amend(T)	11-1-04
410-050-0240	10-28-04	Adopt	12-1-04	410-120-1340	4-1-04	Amend	4-1-04
410-050-0250	5-1-04	Adopt(T)	6-1-04	410-120-1360	4-1-04	Amend	4-1-04
410-050-0250	10-28-04	Adopt	12-1-04	410-120-1390	6-1-04	Adopt(T)	7-1-04
410-050-0400	6-15-04	Adopt(T)	7-1-04	410-120-1390	10-1-04	Amend	11-1-04
410-050-0410	6-15-04	Adopt(T)	7-1-04	410-120-1520	4-1-04	Amend	4-1-04
410-050-0420	6-15-04	Adopt(T)	7-1-04	410-120-1540	4-1-04	Amend	4-1-04
410-050-0430	6-15-04	Adopt(T)	7-1-04	410-120-1570	4-1-04	Amend	4-1-04
410-050-0440	6-15-04	Adopt(T)	7-1-04	410-120-1960	10-1-04	Amend	10-1-04
410-050-0450	6-15-04	Adopt(T)	7-1-04	410-121-0000	4-1-04	Amend	4-1-04
410-050-0460	6-15-04	Adopt(T)	7-1-04	410-121-0021	12-1-03	Adopt	1-1-04
410-050-0470	6-15-04	Adopt(T)	7-1-04	410-121-0021	7-1-04	Amend	8-1-04
410-050-0480	6-15-04	Adopt(T)	7-1-04	410-121-0030	3-1-04	Amend	4-1-04
410-050-0490	6-15-04	Adopt(T)	7-1-04	410-121-0030	5-1-04	Amend	6-1-04
410-050-0500	6-15-04	Adopt(T)	7-1-04	410-121-0030	6-1-04	Amend	7-1-04
410-050-0510	6-15-04	Adopt(T)	7-1-04	410-121-0030	8-1-04	Amend	9-1-04
410-050-0520	6-15-04	Adopt(T)	7-1-04	410-121-0030	11-1-04	Amend	12-1-04
410-050-0530	6-15-04	Adopt(T)	7-1-04	410-121-0033	2-1-04	Adopt	3-1-04
410-050-0540	6-15-04	Adopt(T)	7-1-04	410-121-0040	12-1-03	Amend	1-1-04
410-050-0550	6-15-04	Adopt(T)	7-1-04	410-121-0040	12-15-03	Amend(T)	1-1-04
410-050-0560	6-15-04	Adopt(T)	7-1-04	410-121-0040	3-1-04	Amend	4-1-04
410-050-0570	6-15-04	Adopt(T)	7-1-04	410-121-0040	10-1-04	Amend	10-1-04
410-050-0580	6-15-04	Adopt(T)	7-1-04	410-121-0040	10-1-04	Amend	11-1-04
410-050-0590	6-15-04	Adopt(T)	7-1-04	410-121-0040(T)	3-1-04	Repeal	4-1-04
410-050-0700	11-9-04	Adopt(T)	12-1-04	410-121-0060	4-1-04	Amend	4-1-04
410-050-0710	11-9-04	Adopt(T)	12-1-04	410-121-0061	4-1-04	Amend	4-1-04
410-050-0720	11-9-04	Adopt(T)	12-1-04	410-121-0100	4-1-04	Amend	4-1-04
410-050-0730	11-9-04	Adopt(T)	12-1-04	410-121-0135	4-1-04	Amend	4-1-04

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410-121-0140	4-1-04	Amend	4-1-04	410-122-0180	4-1-04	Amend	5-1-04
410-121-0143	4-1-04	Amend	4-1-04	410-122-0180	7-1-04	Amend	8-1-04
410-121-0144	4-1-04	Amend	4-1-04	410-122-0182	7-1-04	Adopt	8-1-04
410-121-0145	4-1-04	Amend	4-1-04	410-122-0184	7-1-04	Adopt	8-1-04
410-121-0146	3-15-04	Amend	3-1-04	410-122-0186	7-1-04	Adopt	8-1-04
410-121-0146	3-15-04	Amend(T)	4-1-04	410-122-0190	4-1-04	Amend	5-1-04
410-121-0147	4-1-04	Amend	4-1-04	410-122-0190	7-1-04	Amend	8-1-04
410-121-0148	4-1-04	Amend	4-1-04	410-122-0190	10-1-04	Amend	10-1-04
410-121-0150	4-1-04	Amend	4-1-04	410-122-0200	4-1-04	Amend	5-1-04
410-121-0154	4-1-04	Repeal	4-1-04	410-122-0200	7-1-04	Amend	8-1-04
410-121-0155	4-1-04	Amend	4-1-04	410-122-0202	4-1-04	Amend	5-1-04
410-121-0157	3-30-04	Amend	5-1-04	410-122-0202	7-1-04	Amend	8-1-04
410-121-0157	4-4-04	Amend(T)	3-1-04	410-122-0202	8-1-04	Amend	9-1-04
410-121-0157	5-14-04	Amend(T)	6-1-04	410-122-0202	10-1-04	Amend	11-1-04
410-121-0157	7-1-04	Amend	8-1-04	410-122-0203	4-1-04	Amend	5-1-04
410-121-0157	9-10-04	Amend(T)	10-1-04	410-122-0203	7-1-04	Amend	8-1-04
410-121-0157	11-1-04	Amend	12-1-04	410-122-0204	7-1-04	Amend	8-1-04
410-121-0157(T)	7-1-04	Repeal	8-1-04	410-122-0205	4-1-04	Amend	5-1-04
410-121-0157(T)	11-1-04	Repeal	12-1-04	410-122-0205	7-1-04	Amend	8-1-04
410-121-0160	3-15-04	Amend	3-1-04	410-122-0206	7-1-04	Amend	8-1-04
410-121-0160	3-15-04	Amend(T)	4-1-04	410-122-0207	7-1-04	Amend	8-1-04
410-121-0160	4-15-04	Amend	4-1-04	410-122-0208	7-1-04	Amend	8-1-04
410-121-0180	4-1-04	Repeal	4-1-04	410-122-0209	4-1-04	Amend	5-1-04
410-121-0185	4-1-04	Amend	4-1-04	410-122-0209	7-1-04	Amend	8-1-04
410-121-0190	4-1-04	Amend	4-1-04	410-122-0210	4-1-04	Amend	5-1-04
410-121-0200	4-1-04	Amend	4-1-04	410-122-0210	7-1-04	Amend	8-1-04
410-121-0300	12-1-03	Amend(T)	1-1-04	410-122-0210	10-1-04	Amend	11-1-04
410-121-0300	2-1-04	Amend	3-1-04	410-122-0220	7-1-04	Amend	8-1-04
410-121-0300	5-14-04	Amend(T)	6-1-04	410-122-0240	7-1-04	Amend	8-1-04
410-121-0300	7-1-04	Amend	8-1-04	410-122-0250	7-1-04	Amend	8-1-04
410-121-0300(T)	7-1-04	Repeal	8-1-04	410-122-0255	7-1-04	Amend	8-1-04
410-121-0320	2-1-04	Amend	3-1-04	410-122-0260	7-1-04	Amend	8-1-04
410-121-0420	4-1-04	Amend	4-1-04	410-122-0280	7-1-04	Amend	8-1-04
410-121-0580	4-1-04	Amend	4-1-04	410-122-0300	7-1-04	Amend	8-1-04
410-121-0625	4-1-04	Amend	4-1-04	410-122-0320	7-1-04	Amend	8-1-04
410-122-0000	7-1-04	Amend	8-1-04	410-122-0325	7-1-04	Amend	8-1-04
410-122-0010	7-1-04	Adopt	8-1-04	410-122-0330	7-1-04	Amend	8-1-04
410-122-0010	10-1-04	Amend	10-1-04	410-122-0340	4-1-04	Amend	5-1-04
410-122-0020	7-1-04	Amend	8-1-04	410-122-0340	7-1-04	Amend	8-1-04
410-122-0030	4-1-04	Amend	5-1-04	410-122-0360	7-1-04	Amend	8-1-04
410-122-0030	7-1-04	Repeal	8-1-04	410-122-0365	4-1-04	Amend	5-1-04
410-122-0040	3-15-04	Amend	3-1-04	410-122-0365	7-1-04	Amend	8-1-04
410-122-0040	3-15-04	Amend(T)	4-1-04	410-122-0375	4-1-04	Amend	5-1-04
410-122-0040	4-1-04	Amend	5-1-04	410-122-0375	7-1-04	Amend	8-1-04
410-122-0040	5-1-04	Amend	5-1-04	410-122-0380	4-1-04	Amend	5-1-04
410-122-0040	7-1-04	Amend	8-1-04	410-122-0380	7-1-04	Amend	8-1-04
410-122-0055	8-1-04	Adopt	9-1-04	410-122-0400	7-1-04	Amend	8-1-04
410-122-0060	4-1-04	Amend	5-1-04	410-122-0420	7-1-04	Amend	8-1-04
410-122-0060	7-1-04	Repeal	8-1-04	410-122-0470	7-1-04	Amend	8-1-04
410-122-0080	4-1-04	Amend	5-1-04	410-122-0475	7-1-04	Amend	8-1-04
410-122-0080	7-1-04	Amend	8-1-04	410-122-0480	7-1-04	Amend	8-1-04
410-122-0080	8-1-04	Amend	9-1-04	410-122-0500	7-1-04	Amend	8-1-04
410-122-0085	8-1-04	Adopt	9-1-04	410-122-0510	7-1-04	Amend	8-1-04
410-122-0105	4-1-04	Repeal	5-1-04	410-122-0520	7-1-04	Amend	8-1-04
410-122-0120	4-1-04	Repeal	5-1-04	410-122-0525	4-1-04	Amend	5-1-04

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410-122-0530	7-1-04	Amend	8-1-04	410-125-0140	10-1-04	Amend	10-1-04
410-122-0530	8-1-04	Amend	9-1-04	410-125-0141	1-1-04	Amend	2-1-04
410-122-0540	4-1-04	Amend	5-1-04	410-125-0141	10-1-04	Amend(T)	11-1-04
410-122-0540	7-1-04	Amend	8-1-04	410-125-0150	10-1-04	Amend	10-1-04
410-122-0560	4-1-04	Amend	5-1-04	410-125-0165	10-1-04	Amend	10-1-04
410-122-0560	7-1-04	Amend	8-1-04	410-125-0181	1-1-04	Amend	2-1-04
410-122-0580	4-1-04	Amend	5-1-04	410-125-0181	3-15-04	Amend(T)	4-1-04
410-122-0580	7-1-04	Amend	8-1-04	410-125-0181	5-1-04	Amend	6-1-04
410-122-0590	7-1-04	Amend	8-1-04	410-125-0181(T)	5-1-04	Repeal	6-1-04
410-122-0600	7-1-04	Amend	8-1-04	410-125-0195	1-1-04	Amend	2-1-04
410-122-0620	4-1-04	Amend	5-1-04	410-125-0195	10-1-04	Amend(T)	11-1-04
410-122-0620	7-1-04	Amend	8-1-04	410-125-0220	10-1-04	Amend	10-1-04
410-122-0625	4-1-04	Amend	5-1-04	410-125-0225	4-1-04	Repeal	4-1-04
410-122-0625	7-1-04	Amend	8-1-04	410-125-0240	10-1-04	Repeal	10-1-04
410-122-0630	7-1-04	Amend	8-1-04	410-125-0260	10-1-04	Repeal	10-1-04
410-122-0640	7-1-04	Amend	8-1-04	410-125-0360	10-1-04	Amend	10-1-04
410-122-0660	4-1-04	Amend	5-1-04	410-125-0410	4-1-04	Amend	4-1-04
410-122-0660	7-1-04	Amend	8-1-04	410-125-0500	10-1-04	Repeal	10-1-04
410-122-0678	7-1-04	Amend	8-1-04	410-125-0580	10-1-04	Repeal	10-1-04
410-122-0680	7-1-04	Amend	8-1-04	410-125-0620	10-1-04	Amend	10-1-04
410-122-0700	4-1-04	Amend	5-1-04	410-125-0640	10-1-04	Amend	10-1-04
410-122-0700	7-1-04	Amend	8-1-04	410-125-0641	10-1-04	Amend	10-1-04
410-122-0720	7-1-04	Amend	8-1-04	410-125-0680	10-1-04	Repeal	10-1-04
410-123-1060	8-1-04	Amend	9-1-04	410-125-0700	10-1-04	Repeal	10-1-04
410-123-1085	8-1-04	Amend	9-1-04	410-125-0720	10-1-04	Amend	10-1-04
410-123-1240	10-1-04	Amend	10-1-04	410-125-2000	4-1-04	Amend	4-1-04
410-123-1260	10-1-04	Amend	10-1-04	410-125-2000	10-1-04	Amend	10-1-04
410-123-1490	10-1-04	Amend	10-1-04	410-125-2020	10-1-04	Amend	10-1-04
410-123-1670	8-1-04	Adopt	9-1-04	410-125-2030	10-1-04	Amend	10-1-04
410-124-0000	10-1-04	Amend(T)	10-1-04	410-125-2040	10-1-04	Amend	10-1-04
410-125-0000	10-1-04	Amend	10-1-04	410-125-2060	10-1-04	Amend	10-1-04
410-125-0020	10-1-04	Amend	10-1-04	410-125-2080	10-1-04	Amend	10-1-04
410-125-0030	10-1-04	Amend	10-1-04	410-127-0055	8-1-04	Amend	9-1-04
410-125-0040	10-1-04	Amend	10-1-04	410-127-0080	1-1-04	Amend	2-1-04
410-125-0041	10-1-04	Amend	10-1-04	410-127-0100	10-1-04	Repeal	10-1-04
410-125-0045	10-1-04	Amend	10-1-04	410-127-0120	10-1-04	Repeal	10-1-04
410-125-0047	8-1-04	Adopt	9-1-04	410-129-0080	12-1-03	Amend	1-1-04
410-125-0047	9-1-04	Amend(T)	10-1-04	410-129-0080	10-1-04	Amend	10-1-04
410-125-0047	11-1-04	Amend	12-1-04	410-129-0100	4-1-04	Amend	4-1-04
410-125-0050	10-1-04	Amend	10-1-04	410-129-0100	10-1-04	Amend	10-1-04
410-125-0055	8-1-04	Repeal	9-1-04	410-129-0120	10-1-04	Repeal	10-1-04
410-125-0080	4-1-04	Amend	4-1-04	410-129-0140	10-1-04	Repeal	10-1-04
410-125-0080	8-1-04	Amend	9-1-04	410-129-0195	8-1-04	Amend	9-1-04
410-125-0085	10-1-04	Amend	10-1-04	410-129-0200	4-1-04	Amend	4-1-04
410-125-0100	10-1-04	Amend	10-1-04	410-129-0260	4-1-04	Amend	4-1-04
410-125-0101	10-1-04	Amend	10-1-04	410-130-0000	4-1-04	Amend	4-1-04
410-125-0102	10-1-04	Amend	10-1-04	410-130-0160	10-1-04	Amend	10-1-04
410-125-0103	10-1-04	Amend	10-1-04	410-130-0163	8-1-04	Adopt	9-1-04
410-125-0115	3-15-04	Amend(T)	4-1-04	410-130-0165	10-1-04	Repeal	11-1-04
410-125-0115	5-1-04	Amend	6-1-04	410-130-0180	4-1-04	Amend	4-1-04
410-125-0115(T)	5-1-04	Repeal	6-1-04	410-130-0200	4-1-04	Amend	4-1-04
410-125-0120	10-1-04	Amend	10-1-04	410-130-0200	10-1-04	Amend	10-1-04
410-125-0121	3-15-04	Amend(T)	4-1-04	410-130-0220	4-1-04	Amend	4-1-04
410-125-0121	5-1-04	Amend	6-1-04	410-130-0220	10-1-04	Amend	10-1-04
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410-130-0245	10-1-04	Amend	10-1-04	410-141-0140	8-1-04	Amend	9-1-04
410-130-0255	4-1-04	Amend	4-1-04	410-141-0260	6-1-04	Amend	7-1-04
410-130-0255	10-1-04	Amend	10-1-04	410-141-0261	6-1-04	Amend	7-1-04
410-130-0580	10-1-04	Amend	10-1-04	410-141-0262	6-1-04	Amend	7-1-04
410-130-0585	4-1-04	Amend	4-1-04	410-141-0263	6-1-04	Amend	7-1-04
410-130-0587	4-1-04	Amend	4-1-04	410-141-0264	6-1-04	Amend	7-1-04
410-130-0595	10-1-04	Amend	10-1-04	410-141-0265	6-1-04	Amend	7-1-04
410-130-0680	4-1-04	Amend	4-1-04	410-141-0266	6-1-04	Amend	7-1-04
410-130-0700	4-1-04	Amend	4-1-04	410-141-0280	6-1-04	Amend(T)	7-1-04
410-131-0120	10-1-04	Amend	10-1-04	410-141-0280	8-1-04	Amend	9-1-04
410-131-0160	1-1-04	Amend	2-1-04	410-141-0300	6-1-04	Amend(T)	7-1-04
410-131-0160	10-1-04	Amend	10-1-04	410-141-0300	8-1-04	Amend	9-1-04
410-131-0200	10-1-04	Amend	10-1-04	410-141-0410	10-1-04	Amend	10-1-04
410-131-0220	10-1-04	Repeal	10-1-04	410-141-0420	3-23-04	Amend(T)	5-1-04
410-131-0240	10-1-04	Repeal	10-1-04	410-141-0420	6-1-04	Amend	7-1-04
410-131-0275	8-1-04	Amend	9-1-04	410-141-0420	6-1-04	Amend(T)	7-1-04
410-131-0280	4-1-04	Amend	4-1-04	410-141-0420	8-1-04	Amend	9-1-04
410-131-0280	10-1-04	Amend	10-1-04	410-141-0480	1-1-04	Amend	2-1-04
410-132-0055	8-1-04	Amend	9-1-04	410-141-0480	6-1-04	Amend	7-1-04
410-132-0100	1-1-04	Amend	2-1-04	410-141-0480	10-1-04	Amend	10-1-04
410-133-0090	12-15-03	Amend(T)	1-1-04	410-141-0500	1-1-04	Amend	2-1-04
410-133-0090	2-1-04	Amend	3-1-04	410-141-0520	1-1-04	Amend	2-1-04
410-136-0040	10-1-04	Amend	10-1-04	410-141-0520	4-1-04	Amend(T)	4-1-04
410-136-0160	10-1-04	Amend	10-1-04	410-141-0520	5-1-04	Amend	6-1-04
410-136-0200	10-1-04	Amend	10-1-04	410-141-0520	8-1-04	Amend	9-1-04
410-136-0240	10-1-04	Amend	10-1-04	410-141-0520	10-1-04	Amend	10-1-04
410-136-0440	10-1-04	Amend	10-1-04	410-141-0520	10-1-04	Amend(T)	10-1-04
410-136-0800	10-1-04	Amend	10-1-04	410-141-0520	11-1-04	Amend	12-1-04
410-138-0000	10-1-04	Amend	10-1-04	410-142-0300	12-1-03	Amend	1-1-04
410-138-0020	10-1-04	Amend	10-1-04	410-142-0300	10-1-04	Amend	10-1-04
410-138-0040	10-1-04	Amend	10-1-04	410-142-0300	10-1-04	Amend(T)	11-1-04
410-138-0060	10-1-04	Amend	10-1-04	410-146-0000	10-1-04	Amend	10-1-04
410-138-0080	10-1-04	Amend	10-1-04	410-146-0020	10-1-04	Amend	10-1-04
410-138-0100	10-1-04	Repeal	10-1-04	410-146-0021	10-1-04	Amend	10-1-04
410-138-0300	10-1-04	Amend	10-1-04	410-146-0025	10-1-04	Amend	10-1-04
410-138-0320	10-1-04	Amend	10-1-04	410-146-0040	10-1-04	Amend	10-1-04
410-138-0340	10-1-04	Amend	10-1-04	410-146-0080	8-1-04	Amend	9-1-04
410-138-0360	10-1-04	Amend	10-1-04	410-146-0120	10-1-04	Amend	10-1-04
410-138-0380	10-1-04	Amend	10-1-04	410-146-0380	8-1-04	Adopt	9-1-04
410-138-0400	10-1-04	Repeal	10-1-04	410-146-0400	10-1-04	Adopt	10-1-04
410-138-0500	10-1-04	Amend	10-1-04	410-146-0420	10-1-04	Adopt	10-1-04
410-138-0520	10-1-04	Amend	10-1-04	410-146-0440	10-1-04	Adopt	10-1-04
410-138-0530	10-1-04	Adopt	10-1-04	410-146-0460	10-1-04	Adopt	10-1-04
410-138-0540	10-1-04	Amend	10-1-04	410-147-0000	10-1-04	Amend	10-1-04
410-138-0560	10-1-04	Amend	10-1-04	410-147-0060	10-1-04	Amend	10-1-04
410-140-0060	10-1-04	Amend	10-1-04	410-147-0085	8-1-04	Amend	9-1-04
410-140-0080	10-1-04	Amend	10-1-04	410-147-0120	8-1-04	Amend	9-1-04
410-140-0115	8-1-04	Amend	9-1-04	410-147-0125	8-1-04	Adopt	9-1-04
410-140-0115	10-1-04	Amend	10-1-04	410-147-0140	10-1-04	Amend	10-1-04
410-140-0160	10-1-04	Amend	10-1-04	410-147-0200	10-1-04	Amend	10-1-04
410-140-0380	10-1-04	Amend	10-1-04	410-147-0220	10-1-04	Amend	10-1-04
410-141-0000	6-1-04	Amend(T)	7-1-04	410-147-0320	10-1-04	Amend	10-1-04
410-141-0000	8-1-04	Amend	9-1-04	410-147-0340	10-1-04	Amend	10-1-04
410-141-0080	6-1-04	Amend(T)	7-1-04	410-147-0360	10-1-04	Amend	10-1-04
410-141-0080	8-1-04	Amend	9-1-04	410-147-0610	10-1-04	Amend	10-1-04

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410-148-0020	4-1-04	Amend	4-1-04	411-032-0044	5-28-04	Amend	7-1-04
410-148-0020	10-1-04	Amend	10-1-04	411-040-0000	6-1-04	Amend	7-1-04
410-148-0080	4-1-04	Amend	4-1-04	411-048-0000	10-1-04	Amend	11-1-04
410-148-0080	10-1-04	Amend	10-1-04	411-048-0010	10-1-04	Amend	11-1-04
410-148-0090	8-1-04	Amend	9-1-04	411-048-0020	10-1-04	Amend	11-1-04
410-148-0100	10-1-04	Amend	10-1-04	411-048-0030	10-1-04	Amend	11-1-04
410-148-0120	4-1-04	Amend	4-1-04	411-048-0040	10-1-04	Amend	11-1-04
410-148-0260	4-1-04	Amend	4-1-04	411-048-0050	10-1-04	Amend	11-1-04
410-148-0280	4-1-04	Amend	4-1-04	411-048-0060	10-1-04	Amend	11-1-04
410-148-0300	4-1-04	Amend	4-1-04	411-048-0070	10-1-04	Amend	11-1-04
411-009-0000	3-1-04	Repeal	4-1-04	411-048-0080	10-1-04	Amend	11-1-04
411-009-0005	3-1-04	Repeal	4-1-04	411-048-0090	10-1-04	Am. & Ren.	11-1-04
411-009-0015	3-1-04	Repeal	4-1-04	411-048-0100	10-1-04	Amend	11-1-04
411-009-0021	3-1-04	Repeal	4-1-04	411-048-0110	10-1-04	Repeal	11-1-04
411-009-0040	3-1-04	Repeal	4-1-04	411-048-0120	10-1-04	Amend	11-1-04
411-009-0050	3-1-04	Repeal	4-1-04	411-055-0000	2-4-04	Amend	3-1-04
411-009-0060	3-1-04	Repeal	4-1-04	411-055-0000	4-1-04	Amend	5-1-04
411-009-0070	3-1-04	Repeal	4-1-04	411-055-0003	2-4-04	Amend	3-1-04
411-009-0080	3-1-04	Repeal	4-1-04	411-055-0003	4-1-04	Amend	5-1-04
411-009-0090	3-1-04	Repeal	4-1-04	411-055-0005	4-1-04	Amend	5-1-04
411-009-0100	3-1-04	Repeal	4-1-04	411-055-0010	4-1-04	Amend	5-1-04
411-009-0110	3-1-04	Repeal	4-1-04	411-055-0015	4-1-04	Amend	5-1-04
411-015-0005	4-27-04	Amend	6-1-04	411-055-0019	4-1-04	Amend	5-1-04
411-015-0010	4-27-04	Amend	6-1-04	411-055-0024	4-1-04	Amend	5-1-04
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411-015-0015	4-27-04	Amend	6-1-04	411-055-0034	4-1-04	Amend	5-1-04
411-015-0015	7-7-04	Amend(T)	8-1-04	411-055-0039	4-1-04	Amend	5-1-04
411-015-0015	8-6-04	Amend(T)	9-1-04	411-055-0039	8-1-04	Amend	9-1-04
411-015-0015(T)	4-27-04	Repeal	6-1-04	411-055-0045	4-1-04	Amend	5-1-04
411-015-0100	4-27-04	Amend	6-1-04	411-055-0051	4-1-04	Amend	5-1-04
411-015-0100	8-6-04	Amend(T)	9-1-04	411-055-0061	4-1-04	Amend	5-1-04
411-027-0000	8-1-04	Amend(T)	9-1-04	411-055-0081	4-1-04	Amend	5-1-04
411-030-0002	6-7-04	Amend	7-1-04	411-055-0085	4-1-04	Amend	5-1-04
411-030-0020	12-11-03	Amend(T)	1-1-04	411-055-0091	4-1-04	Amend	5-1-04
411-030-0020	6-7-04	Amend	7-1-04	411-055-0101	4-1-04	Amend	5-1-04
411-030-0033	12-11-03	Amend(T)	1-1-04	411-055-0111	4-1-04	Amend	5-1-04
411-030-0033	6-7-04	Amend	7-1-04	411-055-0115	4-1-04	Amend	5-1-04
411-030-0040	12-11-03	Amend(T)	1-1-04	411-055-0121	4-1-04	Amend	5-1-04
411-030-0040	6-7-04	Amend	7-1-04	411-055-0131	4-1-04	Amend	5-1-04
411-030-0050	6-7-04	Amend	7-1-04	411-055-0141	4-1-04	Amend	5-1-04
411-030-0060	12-11-03	Amend(T)	1-1-04	411-055-0151	4-1-04	Amend	5-1-04
411-030-0060	6-7-04	Repeal	7-1-04	411-055-0151	8-1-04	Amend	9-1-04
411-030-0065	12-11-03	Amend(T)	1-1-04	411-055-0161	4-1-04	Amend	5-1-04
411-030-0065	6-7-04	Repeal	7-1-04	411-055-0170	4-1-04	Amend	5-1-04
411-030-0070	6-7-04	Amend	7-1-04	411-055-0180	4-1-04	Amend	5-1-04
411-030-0080	6-7-04	Amend	7-1-04	411-055-0190	4-1-04	Amend	5-1-04
411-031-0020	6-1-04	Adopt	7-1-04	411-055-0200	4-1-04	Amend	5-1-04
411-031-0030	6-1-04	Adopt	7-1-04	411-055-0210	4-1-04	Amend	5-1-04
411-031-0040	6-1-04	Adopt	7-1-04	411-055-0220	4-1-04	Amend	5-1-04
411-031-0050	6-1-04	Adopt	7-1-04	411-055-0230	4-1-04	Amend	5-1-04
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411-032-0005	5-28-04	Amend	7-1-04	411-055-0260	4-1-04	Amend	5-1-04
411-032-0010	5-28-04	Amend	7-1-04	411-055-0270	4-1-04	Amend	5-1-04
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411-056-0007	2-4-04	Amend	3-1-04	411-085-0330	8-1-04	Amend	9-1-04
411-056-0010	3-23-04	Amend(T)	5-1-04	411-085-0340	8-1-04	Amend	9-1-04
411-056-0010	8-1-04	Amend	9-1-04	411-085-0350	8-1-04	Amend	9-1-04
411-056-0018	3-23-04	Amend(T)	5-1-04	411-085-0360	8-1-04	Amend	9-1-04
411-056-0018	8-1-04	Amend	9-1-04	411-085-0370	8-1-04	Amend	9-1-04
411-056-0030	3-23-04	Amend(T)	5-1-04	411-086-0100	8-1-04	Amend	9-1-04
411-056-0030	8-1-04	Amend	9-1-04	411-086-0250	8-1-04	Amend	9-1-04
411-070-0032	8-1-04	Adopt(T)	9-1-04	411-200-0010	3-24-04	Amend	5-1-04
411-070-0359	5-28-04	Amend(T)	7-1-04	411-200-0010	6-23-04	Amend	8-1-04
411-070-0428	5-28-04	Amend(T)	7-1-04	411-300-0100	6-1-04	Amend	7-1-04
411-070-0440	5-28-04	Suspend	7-1-04	411-300-0110	12-11-03	Amend(T)	1-1-04
411-070-0441	5-28-04	Adopt(T)	7-1-04	411-300-0110	6-1-04	Amend	7-1-04
411-070-0446	5-28-04	Suspend	7-1-04	411-300-0170	6-1-04	Amend	7-1-04
411-070-0465	5-28-04	Amend(T)	7-1-04	411-300-0210	6-1-04	Amend	7-1-04
411-071-0000	9-1-04	Amend	10-1-04	411-300-0220	6-1-04	Amend	7-1-04
411-071-0005	9-1-04	Amend	10-1-04	411-320-0010	1-1-04	Adopt	2-1-04
411-071-0010	9-1-04	Amend	10-1-04	411-320-0010	8-3-04	Amend	9-1-04
411-071-0015	9-1-04	Amend	10-1-04	411-320-0020	1-1-04	Adopt	2-1-04
411-071-0020	9-1-04	Amend	10-1-04	411-320-0020	8-3-04	Amend	9-1-04
411-071-0025	9-1-04	Amend	10-1-04	411-320-0030	1-1-04	Adopt	2-1-04
411-071-0027	9-1-04	Amend	10-1-04	411-320-0030	8-3-04	Amend	9-1-04
411-071-0030	9-1-04	Amend	10-1-04	411-320-0040	1-1-04	Adopt	2-1-04
411-071-0035	9-1-04	Amend	10-1-04	411-320-0040	8-3-04	Amend	9-1-04
411-071-0040	9-1-04	Amend	10-1-04	411-320-0050	1-1-04	Adopt	2-1-04
411-071-0045	9-1-04	Amend	10-1-04	411-320-0050	8-3-04	Amend	9-1-04
411-071-0050	9-1-04	Amend	10-1-04	411-320-0060	1-1-04	Adopt	2-1-04
411-071-0055	9-1-04	Repeal	10-1-04	411-320-0060	8-3-04	Amend	9-1-04
411-071-0060	9-1-04	Amend	10-1-04	411-320-0070	1-1-04	Adopt	2-1-04
411-071-0065	9-1-04	Renumber	10-1-04	411-320-0070	8-3-04	Amend	9-1-04
411-071-0070	9-1-04	Amend	10-1-04	411-320-0080	1-1-04	Adopt	2-1-04
411-071-0075	9-1-04	Amend	10-1-04	411-320-0080	8-3-04	Amend	9-1-04
411-071-0080	9-1-04	Amend	10-1-04	411-320-0090	1-1-04	Adopt	2-1-04
411-071-0085	9-1-04	Amend	10-1-04	411-320-0090	8-3-04	Amend	9-1-04
411-071-0090	9-1-04	Amend	10-1-04	411-320-0100	1-1-04	Adopt	2-1-04
411-071-0095	9-1-04	Amend	10-1-04	411-320-0100	8-3-04	Amend	9-1-04
411-071-0100	9-1-04	Amend	10-1-04	411-320-0110	1-1-04	Adopt	2-1-04
411-071-0105	9-1-04	Amend	10-1-04	411-320-0110	8-3-04	Amend	9-1-04
411-071-0110	9-1-04	Amend	10-1-04	411-320-0120	1-1-04	Adopt	2-1-04
411-071-0115	9-1-04	Amend	10-1-04	411-320-0120	8-3-04	Amend	9-1-04
411-085-0000	8-1-04	Amend	9-1-04	411-320-0130	1-1-04	Adopt	2-1-04
411-085-0005	8-1-04	Amend	9-1-04	411-320-0130	8-3-04	Amend	9-1-04
411-085-0010	8-1-04	Amend	9-1-04	411-320-0140	1-1-04	Adopt	2-1-04
411-085-0013	8-1-04	Amend	9-1-04	411-320-0140	8-3-04	Amend	9-1-04
411-085-0015	8-1-04	Amend	9-1-04	411-320-0150	1-1-04	Adopt	2-1-04
411-085-0020	8-1-04	Amend	9-1-04	411-320-0150	8-3-04	Amend	9-1-04
411-085-0025	8-1-04	Amend	9-1-04	411-320-0160	1-1-04	Adopt	2-1-04
411-085-0030	8-1-04	Amend	9-1-04	411-320-0160	8-3-04	Amend	9-1-04
411-085-0040	8-1-04	Amend	9-1-04	411-320-0170	1-1-04	Adopt	2-1-04
411-085-0050	8-1-04	Amend	9-1-04	411-320-0170	8-3-04	Amend	9-1-04
411-085-0060	8-1-04	Amend	9-1-04	411-320-0180	1-1-04	Adopt	2-1-04
411-085-0200	8-1-04	Amend	9-1-04	411-320-0190	1-1-04	Adopt	2-1-04
411-085-0210	8-1-04	Amend	9-1-04	411-320-0190	8-3-04	Amend	9-1-04
411-085-0220	8-1-04	Amend	9-1-04	411-320-0200	1-1-04	Adopt	2-1-04
411-085-0300	8-1-04	Amend	9-1-04	411-320-0200	8-3-04	Amend	9-1-04
411-085-0310	8-1-04	Amend	9-1-04	411-325-0010	1-1-04	Adopt	2-1-04

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411-325-0020	1-1-04	Adopt	2-1-04	411-325-0360	1-1-04	Adopt	2-1-04
411-325-0020	8-1-04	Amend	9-1-04	411-325-0360	8-1-04	Amend	9-1-04
411-325-0030	1-1-04	Adopt	2-1-04	411-325-0370	1-1-04	Adopt	2-1-04
411-325-0030	8-1-04	Amend	9-1-04	411-325-0380	1-1-04	Adopt	2-1-04
411-325-0040	1-1-04	Adopt	2-1-04	411-325-0390	1-1-04	Adopt	2-1-04
411-325-0050	1-1-04	Adopt	2-1-04	411-325-0390	8-1-04	Amend	9-1-04
411-325-0060	1-1-04	Adopt	2-1-04	411-325-0400	1-1-04	Adopt	2-1-04
411-325-0060	8-1-04	Amend	9-1-04	411-325-0400	8-1-04	Amend	9-1-04
411-325-0070	1-1-04	Adopt	2-1-04	411-325-0410	1-1-04	Adopt	2-1-04
411-325-0080	1-1-04	Adopt	2-1-04	411-325-0410	8-1-04	Amend	9-1-04
411-325-0080	8-1-04	Amend	9-1-04	411-325-0420	1-1-04	Adopt	2-1-04
411-325-0090	1-1-04	Adopt	2-1-04	411-325-0420	8-1-04	Amend	9-1-04
411-325-0100	1-1-04	Adopt	2-1-04	411-325-0430	1-1-04	Adopt	2-1-04
411-325-0100	8-1-04	Amend	9-1-04	411-325-0430	8-1-04	Amend	9-1-04
411-325-0110	1-1-04	Adopt	2-1-04	411-325-0440	1-1-04	Adopt	2-1-04
411-325-0120	1-1-04	Adopt	2-1-04	411-325-0440	8-1-04	Amend	9-1-04
411-325-0120	8-1-04	Amend	9-1-04	411-325-0450	1-1-04	Adopt	2-1-04
411-325-0130	1-1-04	Adopt	2-1-04	411-325-0450	8-1-04	Amend	9-1-04
411-325-0130	8-1-04	Amend	9-1-04	411-325-0460	1-1-04	Adopt	2-1-04
411-325-0140	1-1-04	Adopt	2-1-04	411-325-0460	8-1-04	Amend	9-1-04
411-325-0150	1-1-04	Adopt	2-1-04	411-325-0470	1-1-04	Adopt	2-1-04
411-325-0150	8-1-04	Amend	9-1-04	411-325-0470	8-1-04	Amend	9-1-04
411-325-0160	1-1-04	Adopt	2-1-04	411-325-0480	1-1-04	Adopt	2-1-04
411-325-0160	8-1-04	Amend	9-1-04	411-330-0010	12-28-03	Adopt	2-1-04
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411-325-0170	8-1-04	Amend	9-1-04	411-330-0030	12-28-03	Adopt	2-1-04
411-325-0180	1-1-04	Adopt	2-1-04	411-330-0040	12-28-03	Adopt	2-1-04
411-325-0180	8-1-04	Amend	9-1-04	411-330-0050	12-28-03	Adopt	2-1-04
411-325-0190	1-1-04	Adopt	2-1-04	411-330-0060	12-28-03	Adopt	2-1-04
411-325-0190	8-1-04	Amend	9-1-04	411-330-0070	12-28-03	Adopt	2-1-04
411-325-0200	1-1-04	Adopt	2-1-04	411-330-0080	12-28-03	Adopt	2-1-04
411-325-0200	8-1-04	Amend	9-1-04	411-330-0090	12-28-03	Adopt	2-1-04
411-325-0210	1-1-04	Adopt	2-1-04	411-330-0100	12-28-03	Adopt	2-1-04
411-325-0220	1-1-04	Adopt	2-1-04	411-330-0110	12-28-03	Adopt	2-1-04
411-325-0230	1-1-04	Adopt	2-1-04	411-330-0120	12-28-03	Adopt	2-1-04
411-325-0240	1-1-04	Adopt	2-1-04	411-330-0130	12-28-03	Adopt	2-1-04
411-325-0250	1-1-04	Adopt	2-1-04	411-330-0140	12-28-03	Adopt	2-1-04
411-325-0250	8-1-04	Amend	9-1-04	411-330-0150	12-28-03	Adopt	2-1-04
411-325-0260	1-1-04	Adopt	2-1-04	411-330-0160	12-28-03	Adopt	2-1-04
411-325-0260	8-1-04	Amend	9-1-04	411-330-0170	12-28-03	Adopt	2-1-04
411-325-0270	1-1-04	Adopt	2-1-04	411-340-0110	10-25-04	Amend	12-1-04
411-325-0270	8-1-04	Amend	9-1-04	411-340-0130	4-30-04	Amend(T)	6-1-04
411-325-0280	1-1-04	Adopt	2-1-04	411-340-0130	10-25-04	Amend	12-1-04
411-325-0290	1-1-04	Adopt	2-1-04	411-340-0150	10-25-04	Amend	12-1-04
411-325-0290	8-1-04	Amend	9-1-04	411-999-0030	6-1-04	Adopt(T)	6-1-04
411-325-0300	1-1-04	Adopt	2-1-04	413-010-0700	1-1-04	Amend	2-1-04
411-325-0300	8-1-04	Amend	9-1-04	413-010-0705	1-1-04	Amend	2-1-04
411-325-0310	1-1-04	Adopt	2-1-04	413-010-0712	1-1-04	Amend	2-1-04
411-325-0310	8-1-04	Amend	9-1-04	413-010-0714	1-1-04	Amend	2-1-04
411-325-0320	1-1-04	Adopt	2-1-04	413-010-0715	1-1-04	Amend	2-1-04
411-325-0320	8-1-04	Amend	9-1-04	413-010-0716	1-1-04	Amend	2-1-04
411-325-0330	1-1-04	Adopt	2-1-04	413-010-0717	1-1-04	Amend	2-1-04
411-325-0340	1-1-04	Adopt	2-1-04	413-010-0718	1-1-04	Amend	2-1-04
411-325-0340	8-1-04	Amend	9-1-04	413-010-0719	1-1-04	Repeal	2-1-04
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413-010-0722	1-1-04	Amend	2-1-04	413-050-0230	12-12-03	Amend	1-1-04
413-010-0723	1-1-04	Amend	2-1-04	413-050-0240	12-12-03	Amend	1-1-04
413-010-0732	1-1-04	Amend	2-1-04	413-050-0250	12-12-03	Amend	1-1-04
413-010-0735	1-1-04	Amend	2-1-04	413-050-0260	12-12-03	Amend	1-1-04
413-010-0738	1-1-04	Amend	2-1-04	413-050-0270	12-12-03	Amend	1-1-04
413-010-0740	1-1-04	Amend	2-1-04	413-050-0280	12-12-03	Amend	1-1-04
413-010-0743	1-1-04	Amend	2-1-04	413-050-0290	12-12-03	Amend	1-1-04
413-010-0745	1-1-04	Amend	2-1-04	413-050-0300	12-12-03	Amend	1-1-04
413-010-0746	1-1-04	Amend	2-1-04	413-050-0310	7-1-04	Amend	8-1-04
413-010-0748	1-1-04	Adopt	2-1-04	413-070-0500	1-1-04	Amend	2-1-04
413-010-0748	10-1-04	Amend	11-1-04	413-070-0505	1-1-04	Amend	2-1-04
413-010-0750	1-1-04	Amend	2-1-04	413-070-0510	1-1-04	Amend	2-1-04
413-015-0110	11-1-04	Amend	12-1-04	413-070-0515	1-1-04	Amend	2-1-04
413-015-0115	8-1-04	Amend	9-1-04	413-070-0517	1-1-04	Amend	2-1-04
413-015-0115	11-1-04	Amend	12-1-04	413-070-0900	4-1-04	Amend	5-1-04
413-015-0200	8-1-04	Amend	9-1-04	413-070-0905	4-1-04	Amend	5-1-04
413-015-0205	8-1-04	Amend	9-1-04	413-070-0915	1-1-04	Amend(T)	2-1-04
413-015-0210	8-1-04	Amend	9-1-04	413-070-0915	4-1-04	Amend	5-1-04
413-015-0220	8-1-04	Amend	9-1-04	413-070-0915(T)	4-1-04	Repeal	5-1-04
413-015-0305	8-1-04	Amend	9-1-04	413-070-0917	4-1-04	Amend	5-1-04
413-015-0400	8-1-04	Amend	9-1-04	413-070-0920	4-1-04	Amend	5-1-04
413-015-0400	11-1-04	Amend	12-1-04	413-070-0925	4-1-04	Amend	5-1-04
413-015-0405	8-1-04	Amend	9-1-04	413-070-0930	4-1-04	Amend	5-1-04
413-015-0405	11-1-04	Amend	12-1-04	413-070-0935	1-1-04	Amend(T)	2-1-04
413-015-0500	11-1-04	Amend	12-1-04	413-070-0935	4-1-04	Amend	5-1-04
413-015-0505	8-1-04	Amend	9-1-04	413-070-0935(T)	4-1-04	Repeal	5-1-04
413-015-0505	11-1-04	Amend	12-1-04	413-070-0937	1-1-04	Amend(T)	2-1-04
413-015-0510	8-1-04	Amend	9-1-04	413-070-0937	4-1-04	Amend	5-1-04
413-015-0510	11-1-04	Amend	12-1-04	413-070-0937(T)	4-1-04	Repeal	5-1-04
413-015-0511	11-1-04	Adopt	12-1-04	413-070-0940	4-1-04	Amend	5-1-04
413-015-0512	11-1-04	Adopt	12-1-04	413-070-0945	4-1-04	Amend	5-1-04
413-015-0513	11-1-04	Adopt	12-1-04	413-070-0950	4-1-04	Amend	5-1-04
413-015-0514	11-1-04	Adopt	12-1-04	413-070-0955	4-1-04	Amend	5-1-04
413-015-0700	8-1-04	Amend	9-1-04	413-070-0960	4-1-04	Amend	5-1-04
413-015-0710	8-1-04	Amend	9-1-04	413-070-0965	4-1-04	Amend	5-1-04
413-015-0725	8-1-04	Amend	9-1-04	413-070-0970	4-1-04	Amend	5-1-04
413-040-0200	1-1-04	Amend	2-1-04	413-070-0980	1-1-04	Amend(T)	2-1-04
413-040-0205	1-1-04	Adopt	2-1-04	413-070-0980	4-1-04	Amend	5-1-04
413-040-0210	1-1-04	Amend	2-1-04	413-070-0980(T)	4-1-04	Repeal	5-1-04
413-040-0215	1-1-04	Adopt	2-1-04	413-070-0981	1-1-04	Amend(T)	2-1-04
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413-040-0230	1-1-04	Amend	2-1-04	413-070-0981(T)	1-1-04	Suspend	2-1-04
413-040-0240	1-1-04	Amend	2-1-04	413-070-0981(T)	4-1-04	Repeal	5-1-04
413-040-0250	1-1-04	Am. & Ren.	2-1-04	413-070-0982	1-1-04	Adopt(T)	2-1-04
413-040-0260	1-1-04	Amend	2-1-04	413-070-0982	4-1-04	Adopt	5-1-04
413-040-0265	1-1-04	Adopt	2-1-04	413-070-0982(T)	4-1-04	Repeal	5-1-04
413-040-0270	1-1-04	Amend	2-1-04	413-080-0040	3-1-04	Adopt(T)	4-1-04
413-040-0280	1-1-04	Amend	2-1-04	413-080-0040	8-25-04	Adopt	10-1-04
413-040-0290	1-1-04	Amend	2-1-04	413-080-0040(T)	8-25-04	Repeal	10-1-04
413-040-0300	1-1-04	Amend	2-1-04	413-080-0045	3-1-04	Adopt(T)	4-1-04
413-040-0310	1-1-04	Amend	2-1-04	413-080-0045	8-25-04	Adopt	10-1-04
413-040-0320	1-1-04	Amend	2-1-04	413-080-0045(T)	8-25-04	Repeal	10-1-04
413-040-0330	1-1-04	Amend	2-1-04	413-080-0050	3-1-04	Adopt(T)	4-1-04
413-050-0200	12-12-03	Amend	1-1-04	413-080-0050	8-25-04	Adopt	10-1-04
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413-080-0055	8-25-04	Adopt	10-1-04	413-110-0000	1-1-04	Amend	2-1-04
413-080-0055(T)	8-25-04	Repeal	10-1-04	413-110-0010	1-1-04	Amend	2-1-04
413-080-0060	3-1-04	Adopt(T)	4-1-04	413-110-0020	1-1-04	Amend	2-1-04
413-080-0060	8-25-04	Adopt	10-1-04	413-110-0030	1-1-04	Amend	2-1-04
413-080-0060(T)	8-25-04	Repeal	10-1-04	413-110-0040	1-1-04	Amend	2-1-04
413-090-0010	4-1-04	Amend	5-1-04	413-110-0100	1-1-04	Amend	2-1-04
413-090-0010(T)	4-1-04	Repeal	5-1-04	413-110-0110	1-1-04	Amend	2-1-04
413-090-0160	4-1-04	Amend	5-1-04	413-110-0120	1-1-04	Amend	2-1-04
413-090-0160(T)	4-1-04	Repeal	5-1-04	413-110-0130	1-1-04	Amend	2-1-04
413-100-0020	2-10-04	Amend	3-1-04	413-110-0140	1-1-04	Amend	2-1-04
413-100-0030	2-10-04	Amend	3-1-04	413-110-0300	1-1-04	Amend	2-1-04
413-100-0030(T)	2-10-04	Repeal	3-1-04	413-110-0310	1-1-04	Amend	2-1-04
413-100-0040	2-10-04	Amend	3-1-04	413-110-0320	1-1-04	Amend	2-1-04
413-100-0040(T)	2-10-04	Repeal	3-1-04	413-110-0330	1-1-04	Amend	2-1-04
413-100-0050	2-10-04	Amend	3-1-04	413-110-0340	1-1-04	Amend	2-1-04
413-100-0050(T)	2-10-04	Repeal	3-1-04	413-110-0350	1-1-04	Amend	2-1-04
413-100-0070	2-10-04	Amend	3-1-04	413-110-0360	1-1-04	Amend	2-1-04
413-100-0070(T)	2-10-04	Repeal	3-1-04	413-120-0100	4-1-04	Amend	5-1-04
413-100-0080	2-10-04	Amend	3-1-04	413-120-0105	4-1-04	Amend	5-1-04
413-100-0080(T)	2-10-04	Repeal	3-1-04	413-120-0115	11-25-03	Amend(T)	1-1-04
413-100-0110	2-10-04	Amend	3-1-04	413-120-0115	4-1-04	Amend	5-1-04
413-100-0110(T)	2-10-04	Repeal	3-1-04	413-120-0115(T)	4-1-04	Repeal	5-1-04
413-100-0130	2-10-04	Amend	3-1-04	413-120-0150	4-1-04	Amend	5-1-04
413-100-0130(T)	2-10-04	Repeal	3-1-04	413-120-0155	4-1-04	Amend	5-1-04
413-100-0135	2-10-04	Amend	3-1-04	413-120-0165	4-1-04	Amend	5-1-04
413-100-0135(T)	2-10-04	Repeal	3-1-04	413-120-0175	11-25-03	Amend(T)	1-1-04
413-100-0150	2-10-04	Amend	3-1-04	413-120-0175	4-1-04	Amend	5-1-04
413-100-0150(T)	2-10-04	Repeal	3-1-04	413-120-0175(T)	4-1-04	Repeal	5-1-04
413-100-0160	2-10-04	Amend	3-1-04	413-120-0500	1-1-04	Amend	2-1-04
413-100-0160(T)	2-10-04	Repeal	3-1-04	413-120-0510	1-1-04	Amend	2-1-04
413-100-0240	2-10-04	Amend	3-1-04	413-120-0520	1-1-04	Amend	2-1-04
413-100-0240(T)	2-10-04	Repeal	3-1-04	413-120-0530	1-1-04	Amend	2-1-04
413-100-0276	2-10-04	Amend	3-1-04	413-120-0540	1-1-04	Amend	2-1-04
413-100-0276(T)	2-10-04	Repeal	3-1-04	413-120-0550	1-1-04	Adopt	2-1-04
413-100-0290	2-10-04	Amend	3-1-04	413-130-0125	11-19-03	Amend(T)	1-1-04
413-100-0290(T)	2-10-04	Repeal	3-1-04	413-130-0125	4-1-04	Amend	5-1-04
413-100-0400	7-1-04	Amend	8-1-04	413-130-0125(T)	4-1-04	Repeal	5-1-04
413-100-0410	7-1-04	Amend	8-1-04	413-130-0127	4-1-04	Adopt	5-1-04
413-100-0420	7-1-04	Amend	8-1-04	413-130-0127(T)	4-1-04	Repeal	5-1-04
413-100-0430	7-1-04	Amend	8-1-04	413-210-0800	1-9-04	Amend	2-1-04
413-100-0440	7-1-04	Amend	8-1-04	413-210-0806	1-9-04	Amend	2-1-04
413-100-0450	7-1-04	Amend	8-1-04	413-210-0821	1-9-04	Amend	2-1-04
413-100-0460	7-1-04	Amend	8-1-04	413-330-0085	12-17-03	Amend(T)	2-1-04
413-100-0480	7-1-04	Amend	8-1-04	413-330-0085	6-1-04	Amend	7-1-04
413-100-0490	7-1-04	Amend	8-1-04	413-330-0085(T)	6-1-04	Repeal	7-1-04
413-100-0500	7-1-04	Amend	8-1-04	413-330-0087	12-17-03	Amend(T)	2-1-04
413-100-0510	7-1-04	Amend	8-1-04	413-330-0087	6-1-04	Amend	7-1-04
413-100-0520	7-1-04	Amend	8-1-04	413-330-0087(T)	6-1-04	Repeal	7-1-04
413-100-0530	7-1-04	Amend	8-1-04	413-330-0090	12-17-03	Amend(T)	2-1-04
413-100-0540	7-1-04	Amend	8-1-04	413-330-0090	6-1-04	Amend	7-1-04
413-100-0550	7-1-04	Amend	8-1-04	413-330-0090(T)	6-1-04	Repeal	7-1-04
413-100-0560	7-1-04	Amend	8-1-04	413-330-0095	12-17-03	Amend(T)	2-1-04
413-100-0580	7-1-04	Amend	8-1-04	413-330-0095	6-1-04	Amend	7-1-04
413-100-0590	7-1-04	Amend	8-1-04	413-330-0095(T)	6-1-04	Repeal	7-1-04
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413-330-0097(T)	6-1-04	Repeal	7-1-04	414-061-0060	12-7-03	Amend	1-1-04
413-330-0098	12-17-03	Adopt(T)	2-1-04	414-061-0070	12-7-03	Amend	1-1-04
413-330-0098	6-1-04	Adopt	7-1-04	414-061-0080	12-7-03	Amend	1-1-04
413-330-0098(T)	6-1-04	Repeal	7-1-04	414-061-0090	12-7-03	Amend	1-1-04
413-330-0900	1-1-04	Amend(T)	2-1-04	414-061-0100	12-7-03	Amend	1-1-04
413-330-0900	6-1-04	Amend	7-1-04	414-061-0110	12-7-03	Amend	1-1-04
413-330-0900(T)	6-1-04	Repeal	7-1-04	414-061-0120	12-7-03	Amend	1-1-04
413-330-0910	1-1-04	Amend(T)	2-1-04	414-150-0055	12-28-03	Amend	2-1-04
413-330-0910	6-1-04	Amend	7-1-04	414-150-0080	12-28-03	Amend	2-1-04
413-330-0910(T)	6-1-04	Repeal	7-1-04	414-150-0120	12-28-03	Amend	2-1-04
413-330-0920	1-1-04	Amend(T)	2-1-04	414-205-0000	12-28-03	Amend	2-1-04
413-330-0920	6-1-04	Amend	7-1-04	414-205-0055	8-1-04	Amend	9-1-04
413-330-0920(T)	6-1-04	Repeal	7-1-04	414-300-0000	12-28-03	Amend	2-1-04
413-330-0930	1-1-04	Amend(T)	2-1-04	414-300-0005	12-28-03	Amend	2-1-04
413-330-0930	6-1-04	Amend	7-1-04	414-300-0010	12-28-03	Amend	2-1-04
413-330-0930(T)	6-1-04	Repeal	7-1-04	414-300-0180	12-28-03	Amend	2-1-04
413-330-0940	1-1-04	Amend(T)	2-1-04	414-300-0190	12-28-03	Amend	2-1-04
413-330-0940	6-1-04	Amend	7-1-04	414-300-0200	12-28-03	Amend	2-1-04
413-330-0940(T)	6-1-04	Repeal	7-1-04	414-300-0210	12-28-03	Amend	2-1-04
413-330-0950	1-1-04	Amend(T)	2-1-04	414-300-0280	12-28-03	Amend	2-1-04
413-330-0950	6-1-04	Amend	7-1-04	414-300-0360	12-28-03	Amend	2-1-04
413-330-0950(T)	6-1-04	Repeal	7-1-04	414-350-0010	12-28-03	Amend	2-1-04
413-330-0960	1-1-04	Suspend	2-1-04	414-350-0010	12-28-03	Amend	2-1-04
413-330-0960	6-1-04	Amend	7-1-04	414-350-0010	8-1-04	Amend	9-1-04
413-330-0960(T)	6-1-04	Repeal	7-1-04	414-350-0020	12-28-03	Amend	2-1-04
413-330-0970	1-1-04	Amend(T)	2-1-04	414-350-0210	12-28-03	Amend	2-1-04
413-330-0970	6-1-04	Amend	7-1-04	414-350-0235	12-28-03	Amend	2-1-04
413-330-0970(T)	6-1-04	Repeal	7-1-04	414-400-0050	8-1-04	Amend	9-1-04
413-330-0980	1-1-04	Amend(T)	2-1-04	414-500-0010	8-1-04	Amend	9-1-04
413-330-0980	6-1-04	Amend	7-1-04	414-500-0020	8-1-04	Amend	9-1-04
413-330-0980(T)	6-1-04	Repeal	7-1-04	414-500-0030	12-28-03	Amend	2-1-04
413-330-0990	1-1-04	Amend(T)	2-1-04	414-500-0030	8-1-04	Amend	9-1-04
413-330-0990	6-1-04	Amend	7-1-04	414-500-0050	8-1-04	Amend	9-1-04
413-330-0990(T)	6-1-04	Repeal	7-1-04	414-500-0060	8-1-04	Amend	9-1-04
413-330-1000	1-1-04	Amend(T)	2-1-04	414-500-0080	8-1-04	Amend	9-1-04
413-330-1000	6-1-04	Amend	7-1-04	414-600-0000	12-7-03	Suspend	1-1-04
413-330-1000(T)	6-1-04	Repeal	7-1-04	414-600-0000	3-28-04	Repeal	5-1-04
413-330-1010	1-1-04	Amend(T)	2-1-04	414-600-0010	12-7-03	Suspend	1-1-04
413-330-1010	6-1-04	Amend	7-1-04	414-600-0010	3-28-04	Repeal	5-1-04
413-330-1010(T)	6-1-04	Repeal	7-1-04	414-600-0020	12-7-03	Suspend	1-1-04
414-001-0010	8-22-04	Adopt	10-1-04	414-600-0020	3-28-04	Repeal	5-1-04
414-005-0000	8-1-04	Repeal	9-1-04	414-600-0030	12-7-03	Suspend	1-1-04
414-005-0010	8-1-04	Repeal	9-1-04	414-600-0030	3-28-04	Repeal	5-1-04
414-005-0020	8-1-04	Repeal	9-1-04	414-600-0040	12-7-03	Suspend	1-1-04
414-050-0000	8-1-04	Amend	9-1-04	414-600-0040	3-28-04	Repeal	5-1-04
414-050-0005	8-1-04	Amend	9-1-04	414-600-0050	12-7-03	Suspend	1-1-04
414-050-0010	12-28-03	Adopt(T)	2-1-04	414-600-0050	3-28-04	Repeal	5-1-04
414-050-0010	3-28-04	Adopt	5-1-04	414-600-0060	12-7-03	Suspend	1-1-04
414-050-0010(T)	3-28-04	Repeal	5-1-04	414-600-0060	3-28-04	Repeal	5-1-04
414-061-0000	12-7-03	Amend	1-1-04	414-600-0070	12-7-03	Suspend	1-1-04
414-061-0010	12-7-03	Amend	1-1-04	414-600-0070	3-28-04	Repeal	5-1-04
414-061-0020	12-7-03	Amend	1-1-04	414-600-0080	12-7-03	Suspend	1-1-04
414-061-0030	12-7-03	Amend	1-1-04	414-600-0080	3-28-04	Repeal	5-1-04
414-061-0040	12-7-03	Amend	1-1-04	414-600-0090	12-7-03	Suspend	1-1-04
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414-600-0100	3-28-04	Repeal	5-1-04	416-360-0030	10-1-04	Repeal	11-1-04
414-700-0000	12-7-03	Adopt	1-1-04	416-360-0040	10-1-04	Repeal	11-1-04
414-700-0010	12-7-03	Adopt	1-1-04	416-400-0010	7-30-04	Repeal	9-1-04
414-700-0020	12-7-03	Adopt	1-1-04	416-440-0000	7-30-04	Repeal	9-1-04
414-700-0030	12-7-03	Adopt	1-1-04	416-440-0010	5-14-04	Repeal	6-1-04
414-700-0040	12-7-03	Adopt	1-1-04	416-440-0030	5-14-04	Repeal	6-1-04
414-700-0050	12-7-03	Adopt	1-1-04	416-450-0000	7-30-04	Amend	9-1-04
414-700-0060	12-7-03	Adopt	1-1-04	416-450-0010	7-30-04	Amend	9-1-04
414-700-0070	12-7-03	Adopt	1-1-04	416-450-0040	7-30-04	Amend	9-1-04
414-700-0080	12-7-03	Adopt	1-1-04	416-450-0050	7-30-04	Amend	9-1-04
414-700-0090	12-7-03	Adopt	1-1-04	416-450-0060	7-30-04	Amend	9-1-04
416-001-0000	7-8-04	Amend	8-1-04	416-450-0070	7-30-04	Adopt	9-1-04
416-001-0005	7-8-04	Amend	8-1-04	416-500-0000	10-1-04	Adopt	11-1-04
416-001-0015	7-8-04	Adopt	8-1-04	416-500-0010	10-1-04	Adopt	11-1-04
416-001-0020	7-8-04	Adopt	8-1-04	416-500-0020	10-1-04	Adopt	11-1-04
416-030-0000	5-14-04	Repeal	6-1-04	416-500-0030	10-1-04	Adopt	11-1-04
416-030-0010	5-14-04	Repeal	6-1-04	416-500-0040	10-1-04	Adopt	11-1-04
416-030-0020	5-14-04	Repeal	6-1-04	416-500-0050	10-1-04	Adopt	11-1-04
416-030-0030	5-14-04	Repeal	6-1-04	416-510-0000	11-12-04	Repeal	12-1-04
416-030-0040	5-14-04	Repeal	6-1-04	416-510-0010	11-12-04	Repeal	12-1-04
416-030-0050	5-14-04	Repeal	6-1-04	416-510-0020	11-12-04	Repeal	12-1-04
416-030-0060	5-14-04	Repeal	6-1-04	416-510-0030	11-12-04	Repeal	12-1-04
416-030-0070	5-14-04	Repeal	6-1-04	416-510-0040	11-12-04	Repeal	12-1-04
416-030-0080	5-14-04	Repeal	6-1-04	416-510-0050	11-12-04	Repeal	12-1-04
416-030-0090	5-14-04	Repeal	6-1-04	416-510-0060	11-12-04	Repeal	12-1-04
416-030-0100	5-14-04	Repeal	6-1-04	416-510-0070	11-12-04	Repeal	12-1-04
416-030-0110	5-14-04	Repeal	6-1-04	416-510-0080	11-12-04	Repeal	12-1-04
416-105-0000	5-14-04	Adopt	6-1-04	416-510-0090	11-12-04	Repeal	12-1-04
416-105-0010	5-14-04	Adopt	6-1-04	416-520-0000	11-12-04	Repeal	12-1-04
416-105-0020	5-14-04	Adopt	6-1-04	416-520-0010	11-12-04	Repeal	12-1-04
416-105-0030	5-14-04	Adopt	6-1-04	416-520-0020	11-12-04	Repeal	12-1-04
416-105-0040	5-14-04	Adopt	6-1-04	416-520-0030	11-12-04	Repeal	12-1-04
416-110-0000	5-14-04	Repeal	6-1-04	416-520-0040	11-12-04	Repeal	12-1-04
416-110-0010	5-14-04	Repeal	6-1-04	416-520-0050	11-12-04	Repeal	12-1-04
416-110-0020	5-14-04	Repeal	6-1-04	416-520-0060	11-12-04	Repeal	12-1-04
416-110-0030	5-14-04	Repeal	6-1-04	416-520-0070	11-12-04	Repeal	12-1-04
416-150-0000	5-14-04	Amend	6-1-04	416-520-0080	11-12-04	Repeal	12-1-04
416-150-0010	5-14-04	Amend	6-1-04	416-520-0090	11-12-04	Repeal	12-1-04
416-150-0020	5-14-04	Amend	6-1-04	416-520-0100	11-12-04	Repeal	12-1-04
416-150-0030	5-14-04	Amend	6-1-04	416-520-0110	11-12-04	Repeal	12-1-04
416-150-0040	5-14-04	Adopt	6-1-04	416-520-0120	11-12-04	Repeal	12-1-04
416-150-0050	5-14-04	Adopt	6-1-04	416-530-0000	11-12-04	Amend	12-1-04
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416-180-0020	5-14-04	Amend	6-1-04	416-530-0030	11-12-04	Amend	12-1-04
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416-180-0040	5-14-04	Amend	6-1-04	416-530-0050	11-12-04	Amend	12-1-04
416-180-0050	5-14-04	Amend	6-1-04	416-530-0060	11-12-04	Amend	12-1-04
416-330-0000	10-1-04	Amend	11-1-04	416-530-0070	11-12-04	Amend	12-1-04
416-330-0010	10-1-04	Amend	11-1-04	416-530-0080	11-12-04	Amend	12-1-04
416-330-0020	10-1-04	Adopt	11-1-04	416-530-0090	11-12-04	Amend	12-1-04
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416-530-0160	11-12-04	Adopt	12-1-04	436-001-0255	4-1-04	Repeal	4-1-04
416-530-0170	11-12-04	Adopt	12-1-04	436-001-0260	4-1-04	Amend	4-1-04
423-001-0000	9-15-04	Amend	10-1-04	436-001-0265	1-1-04	Amend(T)	1-1-04
423-001-0006	9-15-04	Amend	10-1-04	436-001-0265	4-1-04	Amend	4-1-04
423-005-0005	9-15-04	Amend	10-1-04	436-001-0275	4-1-04	Amend	4-1-04
423-005-0015	9-15-04	Amend	10-1-04	436-001-0285	4-1-04	Repeal	4-1-04
423-005-0020	9-15-04	Amend	10-1-04	436-001-0295	4-1-04	Repeal	4-1-04
423-010-0010	9-15-04	Amend	10-1-04	436-001-0300	4-1-04	Adopt	4-1-04
423-010-0021	9-15-04	Amend	10-1-04	436-009-0003	4-1-04	Amend	4-1-04
423-010-0023	9-15-04	Amend	10-1-04	436-009-0004	4-1-04	Amend	4-1-04
423-010-0024	9-15-04	Amend	10-1-04	436-009-0005	4-1-04	Amend	4-1-04
423-010-0026	9-15-04	Amend	10-1-04	436-009-0008	1-1-04	Amend(T)	1-1-04
423-010-0027	9-15-04	Amend	10-1-04	436-009-0008	4-1-04	Amend	4-1-04
423-010-0028	9-15-04	Amend	10-1-04	436-009-0010	4-1-04	Amend	4-1-04
423-010-0036	9-15-04	Amend	10-1-04	436-009-0015	1-1-04	Amend(T)	1-1-04
423-010-0040	9-15-04	Amend	10-1-04	436-009-0015	4-1-04	Amend	4-1-04
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423-045-0020	9-15-04	Amend	10-1-04	436-009-0025	4-1-04	Amend	4-1-04
423-045-0025	9-15-04	Adopt	10-1-04	436-009-0030	4-1-04	Amend	4-1-04
423-045-0030	9-15-04	Adopt	10-1-04	436-009-0040	4-1-04	Amend	4-1-04
423-045-0035	9-15-04	Adopt	10-1-04	436-009-0050	4-1-04	Amend	4-1-04
436-001-0000	4-1-04	Amend	4-1-04	436-009-0060	1-1-04	Amend(T)	1-1-04
436-001-0001	4-1-04	Amend	4-1-04	436-009-0060	4-1-04	Amend	4-1-04
436-001-0003	4-1-04	Amend	4-1-04	436-009-0070	1-1-04	Amend(T)	1-1-04
436-001-0004	4-1-04	Amend	4-1-04	436-009-0070	4-1-04	Amend	4-1-04
436-001-0005	4-1-04	Amend	4-1-04	436-009-0080	1-1-04	Amend(T)	1-1-04
436-001-0007	4-1-04	Amend	4-1-04	436-009-0080	4-1-04	Amend	4-1-04
436-001-0008	4-1-04	Amend	4-1-04	436-009-0090	4-1-04	Amend	4-1-04
436-001-0025	4-1-04	Repeal	4-1-04	436-010-0003	4-1-04	Amend	4-1-04
436-001-0030	4-1-04	Amend	4-1-04	436-010-0005	1-1-04	Amend(T)	1-1-04
436-001-0045	4-1-04	Repeal	4-1-04	436-010-0005	4-1-04	Amend	4-1-04
436-001-0055	4-1-04	Repeal	4-1-04	436-010-0008	1-1-04	Amend(T)	1-1-04
436-001-0065	4-1-04	Repeal	4-1-04	436-010-0008	4-1-04	Amend	4-1-04
436-001-0090	4-1-04	Repeal	4-1-04	436-010-0210	1-1-04	Amend(T)	1-1-04
436-001-0105	4-1-04	Repeal	4-1-04	436-010-0210	4-1-04	Amend	4-1-04
436-001-0110	4-1-04	Amend	4-1-04	436-010-0220	1-1-04	Amend(T)	1-1-04
436-001-0120	4-1-04	Repeal	4-1-04	436-010-0220	4-1-04	Amend	4-1-04
436-001-0135	4-1-04	Repeal	4-1-04	436-010-0230	1-1-04	Amend(T)	1-1-04
436-001-0140	4-1-04	Repeal	4-1-04	436-010-0230	4-1-04	Amend	4-1-04
436-001-0150	4-1-04	Amend	4-1-04	436-010-0240	1-1-04	Amend(T)	1-1-04
436-001-0155	4-1-04	Amend	4-1-04	436-010-0240	4-1-04	Amend	4-1-04
436-001-0160	4-1-04	Amend	4-1-04	436-010-0250	1-1-04	Amend(T)	1-1-04
436-001-0170	4-1-04	Amend	4-1-04	436-010-0250	4-1-04	Amend	4-1-04
436-001-0171	4-1-04	Repeal	4-1-04	436-010-0265	1-1-04	Amend(T)	1-1-04
436-001-0175	4-1-04	Repeal	4-1-04	436-010-0265	4-1-04	Amend	4-1-04
436-001-0185	4-1-04	Amend	4-1-04	436-010-0270	1-1-04	Amend(T)	1-1-04
436-001-0191	4-1-04	Repeal	4-1-04	436-010-0270	4-1-04	Amend	4-1-04
436-001-0195	4-1-04	Repeal	4-1-04	436-010-0275	1-1-04	Amend(T)	1-1-04
436-001-0201	4-1-04	Amend	4-1-04	436-010-0275	4-1-04	Amend	4-1-04
436-001-0205	4-1-04	Repeal	4-1-04	436-010-0280	1-1-04	Amend(T)	1-1-04
436-001-0210	4-1-04	Amend	4-1-04	436-010-0280	4-1-04	Amend	4-1-04
436-001-0225	4-1-04	Amend	4-1-04	436-010-0340	1-1-04	Amend(T)	1-1-04
436-001-0226	4-1-04	Amend	4-1-04	436-010-0340	4-1-04	Amend	4-1-04

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436-010-0350	4-1-04	Repeal	4-1-04	436-030-0055	2-29-04	Amend	4-1-04
436-015-0008	1-1-04	Amend(T)	1-1-04	436-030-0055	1-1-05	Amend	12-1-04
436-015-0008	6-29-04	Amend	7-1-04	436-030-0065	2-29-04	Amend	4-1-04
436-015-0030	1-1-04	Amend(T)	1-1-04	436-030-0066	2-29-04	Amend	4-1-04
436-015-0030	6-29-04	Amend	7-1-04	436-030-0066	1-1-05	Amend	12-1-04
436-015-0040	6-29-04	Amend	7-1-04	436-030-0115	1-1-04	Amend(T)	1-1-04
436-015-0050	1-1-04	Amend(T)	1-1-04	436-030-0115	2-29-04	Amend	4-1-04
436-015-0050	6-29-04	Amend	7-1-04	436-030-0115	1-1-05	Amend	12-1-04
436-015-0060	1-1-04	Amend(T)	1-1-04	436-030-0115(T)	2-29-04	Repeal	4-1-04
436-015-0060	6-29-04	Amend	7-1-04	436-030-0125	1-1-04	Amend(T)	1-1-04
436-015-0070	1-1-04	Amend(T)	1-1-04	436-030-0125	2-29-04	Amend	4-1-04
436-015-0070	6-29-04	Amend	7-1-04	436-030-0125(T)	2-29-04	Repeal	4-1-04
436-015-0090	1-1-04	Amend(T)	1-1-04	436-030-0135	1-1-04	Amend(T)	1-1-04
436-015-0090	6-29-04	Amend	7-1-04	436-030-0135	2-29-04	Amend	4-1-04
436-015-0130	6-29-04	Repeal	7-1-04	436-030-0135	1-1-05	Amend	12-1-04
436-030-0002	2-29-04	Amend	4-1-04	436-030-0135(T)	2-29-04	Repeal	4-1-04
436-030-0002	1-1-05	Amend	12-1-04	436-030-0145	1-1-04	Amend(T)	1-1-04
436-030-0003	1-1-04	Amend(T)	1-1-04	436-030-0145	2-29-04	Amend	4-1-04
436-030-0003	2-29-04	Amend	4-1-04	436-030-0145	1-1-05	Amend	12-1-04
436-030-0003	1-1-05	Amend	12-1-04	436-030-0145(T)	2-29-04	Repeal	4-1-04
436-030-0003(T)	2-29-04	Repeal	4-1-04	436-030-0155	2-29-04	Amend	4-1-04
436-030-0005	1-1-04	Amend(T)	1-1-04	436-030-0155	1-1-05	Amend	12-1-04
436-030-0005	2-29-04	Amend	4-1-04	436-030-0165	1-1-04	Amend(T)	1-1-04
436-030-0005	1-1-05	Amend	12-1-04	436-030-0165	2-29-04	Amend	4-1-04
436-030-0005(T)	2-29-04	Repeal	4-1-04	436-030-0165	1-1-05	Amend	12-1-04
436-030-0007	1-1-04	Amend(T)	1-1-04	436-030-0165(T)	2-29-04	Repeal	4-1-04
436-030-0007	2-29-04	Amend	4-1-04	436-030-0175	2-29-04	Amend	4-1-04
436-030-0007	1-1-05	Amend	12-1-04	436-030-0175	1-1-05	Amend	12-1-04
436-030-0007(T)	2-29-04	Repeal	4-1-04	436-030-0185	1-1-04	Amend(T)	1-1-04
436-030-0009	1-1-04	Amend(T)	1-1-04	436-030-0185	2-29-04	Amend	4-1-04
436-030-0009	2-29-04	Amend	4-1-04	436-030-0185	1-1-05	Amend	12-1-04
436-030-0009	1-1-05	Amend	12-1-04	436-030-0185(T)	2-29-04	Repeal	4-1-04
436-030-0009(T)	2-29-04	Repeal	4-1-04	436-030-0575	2-29-04	Amend	4-1-04
436-030-0010	1-1-04	Amend(T)	1-1-04	436-030-0580	2-29-04	Amend	4-1-04
436-030-0010	2-29-04	Amend	4-1-04	436-030-0580	1-1-05	Amend	12-1-04
436-030-0010	1-1-05	Repeal	12-1-04	436-030-0581	2-29-04	Repeal	4-1-04
436-030-0010(T)	2-29-04	Repeal	4-1-04	436-035-0002	1-1-05	Amend	12-1-04
436-030-0015	2-29-04	Amend	4-1-04	436-035-0003	1-1-05	Amend	12-1-04
436-030-0015	1-1-05	Amend	12-1-04	436-035-0005	1-1-05	Amend	12-1-04
436-030-0017	2-29-04	Amend	4-1-04	436-035-0007	1-1-05	Amend	12-1-04
436-030-0020	2-29-04	Amend	4-1-04	436-035-0008	1-1-05	Adopt	12-1-04
436-030-0020	1-1-05	Amend	12-1-04	436-035-0009	1-1-05	Adopt	12-1-04
436-030-0023	2-29-04	Adopt	4-1-04	436-035-0010	1-1-05	Repeal	12-1-04
436-030-0023	1-1-05	Amend	12-1-04	436-035-0011	1-1-05	Adopt	12-1-04
436-030-0034	1-1-04	Amend(T)	1-1-04	436-035-0012	1-1-05	Adopt	12-1-04
436-030-0034	2-29-04	Amend	4-1-04	436-035-0013	1-1-05	Adopt	12-1-04
436-030-0034	1-1-05	Amend	12-1-04	436-035-0014	1-1-05	Adopt	12-1-04
436-030-0034(T)	2-29-04	Repeal	4-1-04	436-035-0015	1-1-05	Adopt	12-1-04
436-030-0035	1-1-04	Amend(T)	1-1-04	436-035-0016	1-1-05	Adopt	12-1-04
436-030-0035	2-29-04	Amend	4-1-04	436-035-0017	1-1-05	Adopt	12-1-04
436-030-0035	1-1-05	Amend	12-1-04	436-035-0018	1-1-05	Adopt	12-1-04
436-030-0035(T)	2-29-04	Repeal	4-1-04	436-035-0019	1-1-05	Adopt	12-1-04
436-030-0036	2-29-04	Amend	4-1-04	436-035-0020	1-1-05	Amend	12-1-04
436-030-0036	1-1-05	Amend	12-1-04	436-035-0030	1-1-05	Amend	12-1-04
436-030-0038	2-29-04	Amend	4-1-04	436-035-0040	1-1-05	Amend	12-1-04
436-030-0045	2-29-04	Am. & Ren.	4-1-04	436-035-0050	1-1-05	Amend	12-1-04

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436-035-0070	1-1-05	Amend	12-1-04	436-050-0100	1-1-04	Amend	1-1-04
436-035-0075	1-1-05	Amend	12-1-04	436-050-0110	1-1-04	Amend	1-1-04
436-035-0080	1-1-05	Amend	12-1-04	436-050-0120	1-1-04	Amend	1-1-04
436-035-0090	1-1-05	Amend	12-1-04	436-050-0150	1-1-04	Amend	1-1-04
436-035-0100	1-1-05	Amend	12-1-04	436-050-0150(T)	1-1-04	Repeal	1-1-04
436-035-0110	1-1-05	Amend	12-1-04	436-050-0160	1-1-04	Amend	1-1-04
436-035-0115	1-1-05	Adopt	12-1-04	436-050-0160(T)	1-1-04	Repeal	1-1-04
436-035-0130	1-1-05	Amend	12-1-04	436-050-0165	1-1-04	Adopt	1-1-04
436-035-0140	1-1-05	Amend	12-1-04	436-050-0165(T)	1-1-04	Repeal	1-1-04
436-035-0160	1-1-05	Amend	12-1-04	436-050-0170	1-1-04	Amend	1-1-04
436-035-0170	1-1-05	Repeal	12-1-04	436-050-0175	1-1-04	Amend	1-1-04
436-035-0190	1-1-05	Amend	12-1-04	436-050-0180	1-1-04	Amend	1-1-04
436-035-0200	1-1-05	Repeal	12-1-04	436-050-0185	1-1-04	Amend	1-1-04
436-035-0220	1-1-05	Amend	12-1-04	436-050-0190	1-1-04	Amend	1-1-04
436-035-0230	1-1-05	Amend	12-1-04	436-050-0195	1-1-04	Amend	1-1-04
436-035-0235	1-1-05	Adopt	12-1-04	436-050-0200	1-1-04	Amend	1-1-04
436-035-0250	1-1-05	Amend	12-1-04	436-050-0210	1-1-04	Amend	1-1-04
436-035-0255	1-1-05	Adopt	12-1-04	436-050-0220	1-1-04	Amend	1-1-04
436-035-0260	1-1-05	Amend	12-1-04	436-050-0260	1-1-04	Amend	1-1-04
436-035-0265	1-1-05	Adopt	12-1-04	436-050-0270	1-1-04	Amend	1-1-04
436-035-0270	1-1-05	Repeal	12-1-04	436-050-0280	1-1-04	Amend	1-1-04
436-035-0280	1-1-05	Repeal	12-1-04	436-050-0290	1-1-04	Amend	1-1-04
436-035-0290	1-1-05	Repeal	12-1-04	436-050-0400	1-1-04	Amend	1-1-04
436-035-0300	1-1-05	Repeal	12-1-04	436-050-0440	1-1-04	Amend	1-1-04
436-035-0310	1-1-05	Repeal	12-1-04	436-050-0480	1-1-04	Adopt	1-1-04
436-035-0320	1-1-05	Repeal	12-1-04	436-055-0008	1-1-04	Amend	1-1-04
436-035-0330	1-1-05	Amend	12-1-04	436-060-0003	1-1-05	Amend	12-1-04
436-035-0340	1-1-05	Amend	12-1-04	436-060-0005	1-1-04	Amend(T)	1-1-04
436-035-0350	1-1-05	Amend	12-1-04	436-060-0005	2-29-04	Amend	4-1-04
436-035-0375	1-1-05	Amend	12-1-04	436-060-0005	1-1-05	Amend	12-1-04
436-035-0380	1-1-05	Amend	12-1-04	436-060-0008	1-1-04	Amend	1-1-04
436-035-0385	1-1-05	Amend	12-1-04	436-060-0008	2-29-04	Amend	4-1-04
436-035-0390	1-1-05	Amend	12-1-04	436-060-0008	1-1-05	Amend	12-1-04
436-035-0395	1-1-05	Amend	12-1-04	436-060-0009	2-29-04	Amend	4-1-04
436-035-0400	1-1-05	Amend	12-1-04	436-060-0009	1-1-05	Amend	12-1-04
436-035-0410	1-1-05	Amend	12-1-04	436-060-0010	1-1-04	Amend(T)	1-1-04
436-035-0420	1-1-05	Amend	12-1-04	436-060-0010	2-29-04	Amend	4-1-04
436-035-0430	1-1-05	Amend	12-1-04	436-060-0010	1-1-05	Amend	12-1-04
436-035-0440	1-1-05	Amend	12-1-04	436-060-0010(T)	1-1-04	Suspend	1-1-04
436-035-0450	1-1-05	Amend	12-1-04	436-060-0015	2-29-04	Amend	4-1-04
436-035-0500	1-21-04	Amend(T)	3-1-04	436-060-0015	1-1-05	Amend	12-1-04
436-035-0500	4-19-04	Amend(T)	6-1-04	436-060-0017	2-29-04	Amend	4-1-04
436-035-0500	7-15-04	Amend(T)	8-1-04	436-060-0017	1-1-05	Amend	12-1-04
436-035-0500	1-1-05	Amend	12-1-04	436-060-0018	1-1-05	Amend	12-1-04
436-045-0008	1-1-04	Amend	1-1-04	436-060-0019	1-1-04	Amend(T)	1-1-04
436-050-0003	1-1-04	Amend	1-1-04	436-060-0019	2-29-04	Amend	4-1-04
436-050-0005	1-1-04	Amend	1-1-04	436-060-0019	1-1-05	Amend	12-1-04
436-050-0006	1-1-04	Amend	1-1-04	436-060-0019(T)	1-1-04	Suspend	1-1-04
436-050-0008	1-1-04	Amend	1-1-04	436-060-0020	1-1-04	Amend(T)	1-1-04
436-050-0020	1-1-04	Repeal	1-1-04	436-060-0020	2-29-04	Amend	4-1-04
436-050-0040	1-1-04	Amend	1-1-04	436-060-0020	1-1-05	Amend	12-1-04
436-050-0050	1-1-04	Amend	1-1-04	436-060-0025	2-29-04	Amend	4-1-04
436-050-0055	1-1-04	Amend	1-1-04	436-060-0025	1-1-05	Amend	12-1-04
436-050-0060	1-1-04	Amend	1-1-04	436-060-0030	1-1-04	Amend(T)	1-1-04
436-050-0080	1-1-04	Amend	1-1-04	436-060-0030	2-29-04	Amend	4-1-04

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436-060-0035	1-1-04	Amend(T)	1-1-04	436-105-0003	4-1-04	Amend(T)	5-1-04
436-060-0035	2-29-04	Amend	4-1-04	436-105-0003	8-1-04	Amend	8-1-04
436-060-0035	1-1-05	Amend	12-1-04	436-105-0003(T)	8-1-04	Repeal	8-1-04
436-060-0035(T)	1-1-04	Suspend	1-1-04	436-105-0500	4-1-04	Amend(T)	5-1-04
436-060-0040	2-29-04	Amend	4-1-04	436-105-0500	8-1-04	Amend	8-1-04
436-060-0040	1-1-05	Amend	12-1-04	436-105-0500(T)	8-1-04	Repeal	8-1-04
436-060-0045	1-1-05	Amend	12-1-04	436-105-0540	4-1-04	Amend(T)	5-1-04
436-060-0055	1-1-05	Amend	12-1-04	436-105-0540	8-1-04	Amend	8-1-04
436-060-0060	2-29-04	Amend	4-1-04	436-105-0540(T)	8-1-04	Repeal	8-1-04
436-060-0060	1-1-05	Amend	12-1-04	436-105-0570	8-1-04	Repeal	8-1-04
436-060-0095	1-1-04	Amend(T)	1-1-04	436-120-0003	4-1-04	Amend	4-1-04
436-060-0095	2-29-04	Amend	4-1-04	436-120-0004	4-1-04	Amend	4-1-04
436-060-0095	1-1-05	Amend	12-1-04	436-120-0008	1-1-04	Amend(T)	1-1-04
436-060-0105	1-1-04	Amend(T)	1-1-04	436-120-0008	4-1-04	Amend	4-1-04
436-060-0105	2-29-04	Amend	4-1-04	436-120-0320	4-1-04	Amend	4-1-04
436-060-0105	1-1-05	Amend	12-1-04	436-120-0340	4-1-04	Amend	4-1-04
436-060-0135	2-29-04	Amend	4-1-04	436-120-0350	4-1-04	Amend	4-1-04
436-060-0135	1-1-05	Amend	12-1-04	436-120-0360	4-1-04	Amend	4-1-04
436-060-0140	1-1-04	Amend(T)	1-1-04	436-120-0410	4-1-04	Amend	4-1-04
436-060-0140	2-29-04	Amend	4-1-04	436-120-0500	4-1-04	Amend	4-1-04
436-060-0140	1-1-05	Amend	12-1-04	436-120-0710	4-1-04	Amend	4-1-04
436-060-0147	2-29-04	Amend	4-1-04	436-120-0720	4-1-04	Amend	4-1-04
436-060-0147	1-1-05	Amend	12-1-04	436-120-0830	4-1-04	Amend	4-1-04
436-060-0150	1-1-04	Amend(T)	1-1-04	436-120-0840	4-1-04	Amend	4-1-04
436-060-0150	2-29-04	Amend	4-1-04	436-120-0920	4-1-04	Repeal	4-1-04
436-060-0150	1-1-05	Amend	12-1-04	436-150-0008	1-1-04	Amend	1-1-04
436-060-0155	1-1-05	Amend	12-1-04	436-160-0003	1-1-04	Amend	1-1-04
436-060-0170	1-1-05	Amend	12-1-04	436-160-0310	1-1-04	Amend	1-1-04
436-060-0180	2-29-04	Amend	4-1-04	436-160-0320	1-1-04	Amend	1-1-04
436-060-0180	1-1-05	Amend	12-1-04	436-160-0340	1-1-04	Amend	1-1-04
436-060-0190	2-29-04	Amend	4-1-04	436-160-0350	1-1-04	Amend	1-1-04
436-060-0190	1-1-05	Amend	12-1-04	436-160-0360	1-1-04	Amend	1-1-04
436-060-0195	2-29-04	Amend	4-1-04	437-001-0015	11-26-03	Amend	1-1-04
436-060-0195	1-1-05	Amend	12-1-04	437-001-0096	11-26-03	Amend	1-1-04
436-060-0200	2-29-04	Amend	4-1-04	437-001-0171	11-26-03	Amend	1-1-04
436-060-0200	1-1-05	Amend	12-1-04	437-001-0203	11-26-03	Amend	1-1-04
436-060-0210	2-29-04	Repeal	4-1-04	437-001-0265	11-26-03	Amend	1-1-04
436-060-0500	2-29-04	Amend	4-1-04	437-001-0270	11-26-03	Amend	1-1-04
436-060-0500	1-1-05	Amend	12-1-04	437-001-0430	11-26-03	Amend	1-1-04
436-070-0008	1-1-04	Amend	1-1-04	437-001-0700	11-26-03	Amend	1-1-04
436-075-0008	1-1-04	Amend	1-1-04	437-001-0765	11-26-03	Amend	1-1-04
436-080-0001	1-1-04	Amend	1-1-04	437-002-0100	9-15-04	Amend	10-1-04
436-080-0002	1-1-04	Amend	1-1-04	437-002-0120	7-1-04	Amend	5-1-04
436-080-0003	1-1-04	Amend	1-1-04	437-002-0133	7-1-04	Repeal	5-1-04
436-080-0005	1-1-04	Amend	1-1-04	437-002-0220	12-5-03	Amend	1-1-04
436-080-0006	1-1-04	Amend	1-1-04	437-002-0240	9-15-04	Amend	10-1-04
436-080-0010	1-1-04	Amend	1-1-04	437-002-0300	9-15-04	Amend	10-1-04
436-080-0020	1-1-04	Amend	1-1-04	437-002-0340	5-20-04	Amend	7-1-04
436-080-0030	1-1-04	Amend	1-1-04	437-003-0001	12-5-03	Amend	1-1-04
436-080-0040	1-1-04	Amend	1-1-04	437-003-0001	1-1-04	Amend	2-1-04
436-080-0050	1-1-04	Repeal	1-1-04	437-003-0754	1-1-04	Repeal	2-1-04
436-080-0060	1-1-04	Amend	1-1-04	437-003-1754	1-1-04	Adopt	2-1-04
436-080-0065	1-1-04	Amend	1-1-04	437-003-1760	1-1-04	Repeal	2-1-04
436-080-0070	1-1-04	Amend	1-1-04	437-007-0220	6-7-04	Amend	7-1-04
436-080-0080	1-1-04	Amend	1-1-04	437-007-0600	6-7-04	Amend	7-1-04

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437-007-0615	6-7-04	Amend	7-1-04	440-300-0270	9-30-04	Am. & Ren.	11-1-04
437-007-0650	6-7-04	Amend	7-1-04	440-300-0280	9-30-04	Renumber	11-1-04
437-007-0655	6-7-04	Amend	7-1-04	440-300-0290	9-30-04	Am. & Ren.	11-1-04
437-007-0660	6-7-04	Amend	7-1-04	440-300-0300	9-30-04	Renumber	11-1-04
437-007-0690	6-7-04	Amend	7-1-04	440-300-0310	9-30-04	Am. & Ren.	11-1-04
437-007-0725	6-7-04	Amend	7-1-04	440-300-0320	9-30-04	Renumber	11-1-04
438-005-0040	9-1-04	Amend	8-1-04	440-300-0330	9-30-04	Am. & Ren.	11-1-04
438-005-0050	9-1-04	Amend	8-1-04	440-300-0340	9-30-04	Am. & Ren.	11-1-04
438-005-0055	9-1-04	Amend	8-1-04	440-300-0350	9-30-04	Renumber	11-1-04
438-006-0064	1-1-04	Adopt	1-1-04	440-300-0360	9-30-04	Am. & Ren.	11-1-04
438-009-0010	9-1-04	Amend	8-1-04	441-001-0005	1-1-04	Adopt	2-1-04
438-009-0015	9-1-04	Amend	8-1-04	441-001-0005	8-5-04	Amend	9-1-04
438-012-0017	9-1-04	Adopt	8-1-04	441-001-0010	1-1-04	Adopt	2-1-04
438-012-0018	9-1-04	Amend	8-1-04	441-001-0020	1-1-04	Adopt	2-1-04
438-012-0020	9-1-04	Amend	8-1-04	441-001-0030	1-1-04	Adopt	2-1-04
438-012-0030	9-1-04	Amend	8-1-04	441-001-0040	1-1-04	Adopt	2-1-04
438-012-0032	9-1-04	Amend	8-1-04	441-001-0050	1-1-04	Adopt	2-1-04
438-012-0035	9-1-04	Amend	8-1-04	441-002-0005	1-1-04	Adopt	2-1-04
438-012-0055	9-1-04	Amend	8-1-04	441-002-0010	1-1-04	Adopt	2-1-04
438-012-0060	9-1-04	Amend	8-1-04	441-002-0020	1-1-04	Adopt	2-1-04
438-012-0090	9-1-04	Amend	8-1-04	441-002-0030	1-1-04	Adopt	2-1-04
438-012-0095	9-1-04	Amend	8-1-04	441-002-0040	1-1-04	Adopt	2-1-04
438-012-0100	9-1-04	Amend	8-1-04	441-035-0045	11-26-03	Amend(T)	1-1-04
438-012-0110	9-1-04	Adopt	8-1-04	441-035-0045	5-19-04	Amend	7-1-04
438-015-0011	9-1-04	Adopt	8-1-04	441-049-1001	11-26-03	Adopt(T)	1-1-04
438-015-0110	1-1-04	Adopt	1-1-04	441-049-1001	5-19-04	Adopt	7-1-04
438-022-0005	9-1-04	Amend	8-1-04	441-049-1021	11-26-03	Amend(T)	1-1-04
438-022-0010	9-1-04	Amend	8-1-04	441-049-1021	5-19-04	Amend	7-1-04
440-001-0005	11-8-04	Amend	12-1-04	441-049-1031	11-26-03	Amend(T)	1-1-04
440-020-0010	1-1-04	Adopt	2-1-04	441-049-1031	5-19-04	Amend	7-1-04
440-020-0015	1-1-04	Adopt	2-1-04	441-049-1041	11-26-03	Amend(T)	1-1-04
440-035-0050	9-30-04	Am. & Ren.	11-1-04	441-049-1041	5-19-04	Amend	7-1-04
440-035-0060	9-30-04	Renumber	11-1-04	441-049-1051	11-26-03	Amend(T)	1-1-04
440-035-0070	9-30-04	Am. & Ren.	11-1-04	441-049-1051	5-19-04	Amend	7-1-04
440-035-0080	9-30-04	Renumber	11-1-04	441-065-0001	11-26-03	Adopt(T)	1-1-04
440-045-0020	1-1-05	Amend	12-1-04	441-065-0001	5-19-04	Adopt	7-1-04
440-045-0025	1-1-05	Amend	12-1-04	441-065-0015	11-26-03	Amend(T)	1-1-04
440-055-0000	1-1-04	Repeal	2-1-04	441-065-0015	5-19-04	Amend	7-1-04
440-055-0005	1-1-04	Repeal	2-1-04	441-065-0020	11-26-03	Amend(T)	1-1-04
440-055-0008	1-1-04	Adopt	2-1-04	441-065-0020	5-19-04	Amend	7-1-04
440-100-0010	1-1-04	Adopt	2-1-04	441-065-0035	11-26-03	Amend(T)	1-1-04
440-200-0020	9-30-04	Am. & Ren.	11-1-04	441-065-0035	5-19-04	Amend	7-1-04
440-300-0010	9-30-04	Am. & Ren.	11-1-04	441-065-0170	11-26-03	Amend(T)	1-1-04
440-300-0020	9-30-04	Am. & Ren.	11-1-04	441-065-0170	5-19-04	Amend	7-1-04
440-300-0030	9-30-04	Am. & Ren.	11-1-04	441-065-0180	11-26-03	Amend(T)	1-1-04
440-300-0040	9-30-04	Renumber	11-1-04	441-065-0180	5-19-04	Amend	7-1-04
440-300-0050	9-30-04	Am. & Ren.	11-1-04	441-065-0270	11-26-03	Amend(T)	1-1-04
440-300-0060	9-30-04	Am. & Ren.	11-1-04	441-065-0270	5-19-04	Amend	7-1-04
440-300-0070	9-30-04	Am. & Ren.	11-1-04	441-075-0020	11-26-03	Amend(T)	1-1-04
440-300-0200	9-30-04	Am. & Ren.	11-1-04	441-075-0020	5-19-04	Amend	7-1-04
440-300-0210	9-30-04	Am. & Ren.	11-1-04	441-095-0030	11-26-03	Amend(T)	1-1-04
440-300-0220	9-30-04	Am. & Ren.	11-1-04	441-095-0030	5-19-04	Amend	7-1-04
440-300-0230	9-30-04	Renumber	11-1-04	441-175-0002	11-26-03	Adopt(T)	1-1-04
440-300-0240	9-30-04	Am. & Ren.	11-1-04	441-175-0002	5-19-04	Adopt	7-1-04
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441-175-0015	5-19-04	Amend	7-1-04	441-865-0040	8-5-04	Amend	9-1-04
441-175-0035	1-1-04	Repeal	2-1-04	441-870-0050	8-5-04	Amend	9-1-04
441-175-0055	1-1-04	Amend	2-1-04	441-875-0040	8-5-04	Amend	9-1-04
441-175-0060	11-26-03	Amend(T)	1-1-04	441-880-0010	8-5-04	Amend	9-1-04
441-175-0060	5-19-04	Amend	7-1-04	441-880-0020	8-5-04	Amend	9-1-04
441-175-0080	11-26-03	Amend(T)	1-1-04	441-880-0030	8-5-04	Amend	9-1-04
441-175-0080	5-19-04	Amend	7-1-04	441-880-0040	8-5-04	Amend	9-1-04
441-175-0085	11-26-03	Amend(T)	1-1-04	441-880-0050	1-1-04	Adopt	2-1-04
441-175-0085	5-19-04	Amend	7-1-04	441-880-0050	8-5-04	Amend	9-1-04
441-175-0100	11-26-03	Amend(T)	1-1-04	441-910-0060	8-5-04	Amend	9-1-04
441-175-0100	5-19-04	Amend	7-1-04	441-910-0095	8-5-04	Amend	9-1-04
441-175-0120	11-26-03	Amend(T)	1-1-04	441-910-0110	8-5-04	Amend	9-1-04
441-175-0120	5-19-04	Amend	7-1-04	441-910-0120	8-5-04	Amend	9-1-04
441-175-0130	11-26-03	Amend(T)	1-1-04	442-001-0000	11-1-04	Amend	12-1-04
441-175-0130	1-1-04	Amend	2-1-04	442-001-0005	11-1-04	Amend	12-1-04
441-175-0130	5-19-04	Amend	7-1-04	442-001-0010	11-1-04	Adopt	12-1-04
441-175-0160	11-26-03	Amend(T)	1-1-04	442-001-0015	11-1-04	Adopt	12-1-04
441-175-0160	5-19-04	Amend	7-1-04	442-003-0000	11-1-04	Repeal	12-1-04
441-175-0165	11-26-03	Amend(T)	1-1-04	442-003-0010	11-1-04	Repeal	12-1-04
441-175-0165	5-19-04	Amend	7-1-04	442-003-0020	11-1-04	Repeal	12-1-04
441-175-0171	11-26-03	Amend(T)	1-1-04	442-003-0030	11-1-04	Repeal	12-1-04
441-175-0171	5-19-04	Amend	7-1-04	442-003-0040	11-1-04	Repeal	12-1-04
441-195-0010	5-19-04	Amend	7-1-04	442-003-0050	11-1-04	Repeal	12-1-04
441-195-0020	5-19-04	Amend	7-1-04	442-003-0060	11-1-04	Repeal	12-1-04
441-195-0030	5-19-04	Amend	7-1-04	442-003-0070	11-1-04	Repeal	12-1-04
441-195-0035	1-1-04	Repeal	2-1-04	442-003-0080	11-1-04	Repeal	12-1-04
441-505-3020	8-5-04	Amend	9-1-04	442-003-0090	11-1-04	Repeal	12-1-04
441-505-3060	8-5-04	Amend	9-1-04	442-004-0005	11-1-04	Repeal	12-1-04
441-710-0038	8-5-04	Amend	9-1-04	442-004-0010	11-1-04	Amend	12-1-04
441-710-0070	8-5-04	Amend	9-1-04	442-004-0020	11-1-04	Amend	12-1-04
441-730-0010	8-5-04	Amend	9-1-04	442-004-0050	11-1-04	Amend	12-1-04
441-730-0030	1-1-04	Amend	2-1-04	442-004-0070	11-1-04	Amend	12-1-04
441-730-0030	1-1-05	Amend	12-1-04	442-004-0080	11-1-04	Amend	12-1-04
441-730-0080	8-5-04	Amend	9-1-04	442-004-0085	11-1-04	Adopt	12-1-04
441-730-0100	8-5-04	Amend	9-1-04	442-004-0090	11-1-04	Amend	12-1-04
441-730-0160	8-5-04	Amend	9-1-04	442-004-0110	11-1-04	Amend	12-1-04
441-730-0270	8-5-04	Amend	9-1-04	442-004-0115	11-1-04	Amend	12-1-04
441-730-0275	8-5-04	Amend	9-1-04	442-004-0117	11-1-04	Adopt	12-1-04
441-740-0030	1-1-04	Adopt	2-1-04	442-004-0120	11-1-04	Amend	12-1-04
441-810-0200	1-1-04	Adopt	2-1-04	442-004-0130	11-1-04	Amend	12-1-04
441-810-0210	1-1-04	Adopt	2-1-04	442-004-0140	11-1-04	Amend	12-1-04
441-810-0220	1-1-04	Adopt	2-1-04	442-004-0150	11-1-04	Amend	12-1-04
441-810-0230	1-1-04	Adopt	2-1-04	442-004-0160	11-1-04	Amend	12-1-04
441-810-0240	1-1-04	Adopt	2-1-04	443-015-0010	5-1-04	Amend	6-1-04
441-810-0250	1-1-04	Adopt	2-1-04	445-050-0005	2-15-04	Amend	2-1-04
441-810-0260	1-1-04	Adopt	2-1-04	445-050-0020	2-15-04	Amend	2-1-04
441-830-0010	8-5-04	Amend	9-1-04	445-050-0030	2-15-04	Amend	2-1-04
441-830-0020	8-5-04	Amend	9-1-04	445-050-0040	2-15-04	Amend	2-1-04
441-830-0030	8-5-04	Amend	9-1-04	445-050-0050	2-15-04	Amend	2-1-04
441-830-0040	8-5-04	Amend	9-1-04	445-050-0060	2-15-04	Amend	2-1-04
441-860-0010	8-5-04	Amend	9-1-04	445-050-0080	2-15-04	Amend	2-1-04
441-860-0020	1-1-04	Amend	2-1-04	445-050-0090	2-15-04	Amend	2-1-04
441-860-0050	1-1-04	Amend	2-1-04	445-050-0155	2-15-04	Amend	2-1-04
441-860-0060	8-5-04	Amend	9-1-04	459-001-0000	6-15-04	Amend	7-1-04
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459-005-0001	5-21-04	Amend(T)	5-1-04	459-080-0100	1-22-04	Adopt	3-1-04
459-005-0001	6-15-04	Amend	7-1-04	459-080-0150	6-21-04	Adopt(T)	7-1-04
459-005-0001(T)	11-20-03	Repeal	1-1-04	459-080-0150	9-22-04	Adopt	11-1-04
459-005-0055	2-18-04	Amend	4-1-04	459-080-0200	1-1-04	Adopt(T)	1-1-04
459-005-0210	10-14-04	Amend	11-1-04	459-080-0200	5-19-04	Adopt	7-1-04
459-005-0250	1-1-04	Adopt	1-1-04	459-080-0200	10-18-04	Adopt	12-1-04
459-005-0250	9-22-04	Amend	11-1-04	459-080-0250	9-22-04	Adopt(T)	11-1-04
459-005-0320	1-22-04	Repeal	3-1-04	459-080-0500	1-1-04	Adopt	1-1-04
459-007-0001	12-15-03	Amend	1-1-04	461-025-0310	10-1-04	Amend	11-1-04
459-007-0001(T)	12-15-03	Repeal	1-1-04	461-025-0311	1-1-04	Amend	2-1-04
459-007-0003	12-15-03	Adopt	1-1-04	461-025-0315	10-1-04	Amend	11-1-04
459-007-0005	4-15-04	Adopt	5-1-04	461-101-0010	4-1-04	Amend	5-1-04
459-007-0030	4-15-04	Repeal	5-1-04	461-101-0010	7-1-04	Amend	8-1-04
459-007-0040	12-15-03	Amend	1-1-04	461-101-0010	10-1-04	Amend	11-1-04
459-007-0040(T)	12-15-03	Repeal	1-1-04	461-110-0210	7-1-04	Amend	8-1-04
459-007-0050	12-15-03	Amend	1-1-04	461-110-0330	1-1-04	Amend	2-1-04
459-007-0050	6-15-04	Amend	7-1-04	461-110-0330	7-1-04	Amend	8-1-04
459-007-0050(T)	12-15-03	Repeal	1-1-04	461-110-0350	12-17-03	Amend(T)	2-1-04
459-007-0060	12-15-03	Amend	1-1-04	461-110-0350	4-1-04	Amend	5-1-04
459-007-0060(T)	12-15-03	Repeal	1-1-04	461-110-0370	10-1-04	Amend	11-1-04
459-007-0070	4-1-04	Amend	1-1-04	461-110-0390	4-1-04	Amend	5-1-04
459-007-0080	4-1-04	Amend	1-1-04	461-110-0410	10-1-04	Amend	11-1-04
459-007-0090	4-1-04	Amend	1-1-04	461-110-0610	10-1-04	Amend	11-1-04
459-007-0095	12-15-03	Adopt	1-1-04	461-110-0630	4-1-04	Amend	5-1-04
459-007-0100	12-15-03	Repeal	1-1-04	461-110-0630	7-1-04	Amend	8-1-04
459-007-0210	4-15-04	Repeal	5-1-04	461-110-0750	4-1-04	Amend	5-1-04
459-007-0300	4-15-04	Amend	5-1-04	461-115-0015	1-1-04	Amend	2-1-04
459-007-0510	4-15-04	Amend	5-1-04	461-115-0015	4-1-04	Amend	5-1-04
459-007-0520	4-15-04	Repeal	5-1-04	461-115-0030	7-1-04	Amend	8-1-04
459-009-0100	1-1-04	Amend	2-1-04	461-115-0030	10-1-04	Amend	11-1-04
459-009-0110	1-1-04	Repeal	2-1-04	461-115-0050	10-1-04	Amend	11-1-04
459-010-0055	7-1-04	Amend	7-1-04	461-115-0190	10-1-04	Amend	11-1-04
459-011-0100	1-22-04	Amend	3-1-04	461-115-0430	7-1-04	Amend	8-1-04
459-011-0110	1-22-04	Amend	3-1-04	461-115-0530	7-1-04	Amend	8-1-04
459-013-0280	7-1-04	Adopt	7-1-04	461-115-0651	7-1-04	Amend	8-1-04
459-013-0280	7-1-04	Adopt(T)	5-1-04	461-115-0651	9-7-04	Amend(T)	10-1-04
459-013-0300	12-15-03	Adopt	1-1-04	461-115-0705	1-1-04	Amend	2-1-04
459-017-0060	12-15-03	Amend(T)	1-1-04	461-115-0705	10-1-04	Amend	11-1-04
459-017-0060	6-15-04	Amend	7-1-04	461-120-0120	1-1-04	Amend	2-1-04
459-035-0050	1-1-04	Amend	1-1-04	461-120-0125	1-1-04	Amend(T)	2-1-04
459-045-0001	11-20-03	Amend	1-1-04	461-120-0125	4-1-04	Amend	5-1-04
459-045-0001(T)	11-20-03	Repeal	1-1-04	461-120-0125	4-9-04	Amend(T)	5-1-04
459-045-0030	7-1-04	Amend	7-1-04	461-120-0125	5-11-04	Amend(T)	6-1-04
459-060-0001	12-15-03	Amend	1-1-04	461-120-0125	7-1-04	Amend	8-1-04
459-060-0010	12-15-03	Amend	1-1-04	461-120-0125(T)	1-1-04	Suspend	2-1-04
459-060-0020	12-15-03	Amend	1-1-04	461-120-0125(T)	5-11-04	Suspend	6-1-04
459-070-0001	2-18-04	Adopt	4-1-04	461-120-0210	7-1-04	Amend	8-1-04
459-070-0100	1-1-04	Adopt	2-1-04	461-120-0330	7-1-04	Amend	8-1-04
459-070-0110	1-1-04	Adopt	2-1-04	461-120-0340	1-1-04	Amend	2-1-04
459-070-0900	2-18-04	Adopt(T)	4-1-04	461-120-0345	1-1-04	Amend	2-1-04
459-070-0900	5-19-04	Adopt	7-1-04	461-120-0345	1-1-04	Amend	2-1-04
459-075-0010	2-18-04	Adopt	4-1-04	461-120-0345	4-1-04	Amend	5-1-04
459-075-0030	1-1-04	Adopt	2-1-04	461-120-0345	7-1-04	Amend	8-1-04
459-075-0100	1-22-04	Adopt	3-1-04	461-120-0510	4-1-04	Amend	5-1-04
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461-120-0630	7-1-04	Amend	8-1-04	461-135-0845	7-1-04	Amend	8-1-04
461-125-0370	10-1-04	Amend	11-1-04	461-135-0847	1-1-04	Adopt	2-1-04
461-125-0510	4-1-04	Amend	5-1-04	461-135-0847	10-1-04	Amend	11-1-04
461-125-0510	6-1-04	Amend(T)	7-1-04	461-135-0875	10-1-04	Amend	11-1-04
461-125-0510	10-1-04	Amend	11-1-04	461-135-0990	10-1-04	Amend	11-1-04
461-125-0600	4-1-04	Repeal	5-1-04	461-135-1070	7-1-04	Amend(T)	8-1-04
461-125-0610	4-1-04	Repeal	5-1-04	461-135-1070	10-1-04	Amend	11-1-04
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461-125-0660	4-1-04	Repeal	5-1-04	461-135-1110	7-1-04	Amend	8-1-04
461-125-0690	4-1-04	Repeal	5-1-04	461-135-1120	1-1-04	Amend	2-1-04
461-125-0890	4-1-04	Repeal	5-1-04	461-135-1120	2-19-04	Amend(T)	4-1-04
461-125-0910	4-1-04	Repeal	5-1-04	461-135-1120	7-1-04	Amend	8-1-04
461-125-0930	4-1-04	Repeal	5-1-04	461-135-1120	10-1-04	Amend	11-1-04
461-130-0327	7-1-04	Amend	8-1-04	461-135-1130	12-1-03	Amend(T)	1-1-04
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461-135-0010	1-1-04	Amend	2-1-04	461-135-1130	2-19-04	Amend(T)	4-1-04
461-135-0085	7-1-04	Amend	8-1-04	461-135-1130	4-1-04	Amend	5-1-04
461-135-0170	7-1-04	Amend	8-1-04	461-135-1130	4-1-04	Amend(T)	5-1-04
461-135-0180	1-1-04	Repeal	2-1-04	461-135-1130	7-1-04	Amend	8-1-04
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461-135-0300	7-1-04	Amend	8-1-04	461-135-1130(T)	4-1-04	Repeal	5-1-04
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461-135-0320	7-1-04	Amend	8-1-04	461-140-0120	7-1-04	Amend	8-1-04
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461-135-0720	10-1-04	Repeal	11-1-04	461-145-0240	7-1-04	Amend	8-1-04
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461-135-0730	1-1-04	Amend	2-1-04	461-145-0280	7-1-04	Amend	8-1-04
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461-135-0730	7-1-04	Amend	8-1-04	461-145-0360	4-1-04	Amend	5-1-04
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461-135-0780	1-1-04	Amend	2-1-04	461-145-0410	10-1-04	Amend	11-1-04
461-135-0780	7-1-04	Amend	8-1-04	461-145-0420	7-1-04	Amend	8-1-04
461-135-0830	1-1-04	Amend	2-1-04	461-145-0530	4-1-04	Amend	5-1-04
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461-150-0020	7-1-04	Amend	8-1-04	461-160-0500	4-1-04	Amend	5-1-04
461-150-0042	7-1-04	Amend	8-1-04	461-160-0510	4-1-04	Repeal	5-1-04
461-155-0010	4-1-04	Amend	5-1-04	461-160-0520	4-1-04	Repeal	5-1-04
461-155-0010	7-1-04	Amend	8-1-04	461-160-0540	10-1-04	Amend	11-1-04
461-155-0020	1-1-04	Amend	2-1-04	461-160-0550	4-1-04	Amend	5-1-04
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461-155-0300	1-1-04	Amend	2-1-04	461-175-0200	10-1-04	Amend	11-1-04
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461-155-0680	1-1-04	Amend	2-1-04	461-180-0070	7-1-04	Amend	8-1-04
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462-110-0030	4-8-04	Amend	5-1-04	471-031-0077	12-14-03	Adopt	1-1-04
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471-030-0045	12-14-03	Amend	1-1-04	571-020-0120	5-17-04	Amend	6-1-04
471-030-0054	8-1-04	Adopt	9-1-04	571-020-0180	5-17-04	Amend	6-1-04
471-030-0055	8-1-04	Amend	9-1-04	571-024-0005	7-19-04	Amend	8-1-04
471-030-0065	8-1-04	Amend	9-1-04	571-060-0005	7-1-04	Amend	6-1-04
471-030-0074	8-1-04	Adopt	9-1-04	571-060-0005	7-1-04	Amend	8-1-04
471-030-0075	8-1-04	Amend	9-1-04	573-001-0000	4-5-04	Amend	5-1-04
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573-020-0021	4-5-04	Repeal	5-1-04	573-075-0180	4-5-04	Adopt	5-1-04
573-020-0024	4-5-04	Repeal	5-1-04	573-075-0190	4-5-04	Adopt	5-1-04
573-020-0025	4-5-04	Repeal	5-1-04	573-075-0200	4-5-04	Adopt	5-1-04
573-020-0030	4-5-04	Repeal	5-1-04	573-075-0210	4-5-04	Adopt	5-1-04
573-020-0035	4-5-04	Repeal	5-1-04	573-075-0220	4-5-04	Adopt	5-1-04
573-020-0037	4-5-04	Repeal	5-1-04	573-075-0230	4-5-04	Adopt	5-1-04
573-020-0049	4-5-04	Repeal	5-1-04	573-075-0240	4-5-04	Adopt	5-1-04
573-020-0052	4-5-04	Repeal	5-1-04	573-075-0250	4-5-04	Adopt	5-1-04
573-020-0060	4-5-04	Repeal	5-1-04	573-075-0260	4-5-04	Adopt	5-1-04
573-020-0065	4-5-04	Repeal	5-1-04	573-075-0270	4-5-04	Adopt	5-1-04
573-020-0070	4-5-04	Repeal	5-1-04	573-080-0005	4-5-04	Amend	5-1-04
573-020-0075	4-5-04	Repeal	5-1-04	573-080-0025	4-5-04	Amend	5-1-04
573-020-0080	4-5-04	Repeal	5-1-04	573-090-0000	4-5-04	Repeal	5-1-04
573-020-0085	4-5-04	Repeal	5-1-04	573-090-0005	4-5-04	Repeal	5-1-04
573-020-0090	4-5-04	Repeal	5-1-04	573-090-0010	4-5-04	Repeal	5-1-04
573-020-0095	4-5-04	Repeal	5-1-04	574-001-0000	8-4-04	Amend	9-1-04
573-020-0100	4-5-04	Repeal	5-1-04	574-010-0005	8-4-04	Amend	9-1-04
573-020-0105	4-5-04	Repeal	5-1-04	574-010-0010	8-4-04	Amend	9-1-04
573-020-0110	4-5-04	Repeal	5-1-04	574-010-0015	8-4-04	Repeal	9-1-04
573-020-0115	4-5-04	Repeal	5-1-04	574-010-0020	8-4-04	Amend	9-1-04
573-020-0120	4-5-04	Repeal	5-1-04	574-010-0025	8-4-04	Repeal	9-1-04
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573-020-0130	4-5-04	Repeal	5-1-04	574-010-0035	8-4-04	Repeal	9-1-04
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573-050-0030	4-5-04	Amend	5-1-04	574-010-0068	8-4-04	Amend	9-1-04
573-050-0035	4-5-04	Amend	5-1-04	574-010-0070	8-4-04	Amend	9-1-04
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573-070-0067	4-5-04	Amend	5-1-04	574-040-0001	8-4-04	Amend	9-1-04
573-070-0068	4-5-04	Amend	5-1-04	574-040-0005	8-4-04	Amend	9-1-04
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573-075-0100	4-5-04	Adopt	5-1-04	576-030-0030	7-1-04	Amend	8-1-04
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580-010-0037	12-3-03	Amend	1-1-04	580-050-0110	6-9-04	Adopt(T)	7-1-04
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580-010-0041	12-3-03	Amend	1-1-04	580-050-0130	6-9-04	Adopt(T)	7-1-04
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580-020-0006	12-1-03	Adopt(T)	1-1-04	580-050-0150	6-9-04	Adopt(T)	7-1-04
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580-021-0041	9-29-04	Adopt	11-1-04	580-050-0180	6-9-04	Adopt(T)	7-1-04
580-021-0044	12-1-03	Adopt(T)	1-1-04	580-050-0190	6-9-04	Adopt(T)	7-1-04
580-021-0044	4-8-04	Adopt	5-1-04	580-050-0200	6-9-04	Adopt(T)	7-1-04
580-040-0035	12-24-03	Amend	2-1-04	580-050-0210	6-9-04	Adopt(T)	7-1-04
580-040-0040	6-15-04	Amend	7-1-04	580-050-0220	6-9-04	Adopt(T)	7-1-04
580-040-0100	7-23-04	Amend	9-1-04	580-050-0230	6-9-04	Adopt(T)	7-1-04
580-040-0205	7-23-04	Amend	9-1-04	580-050-0240	6-9-04	Adopt(T)	7-1-04
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580-040-0215	7-23-04	Amend	9-1-04	580-050-0260	6-9-04	Adopt(T)	7-1-04
580-040-0223	7-23-04	Amend	9-1-04	580-050-0270	6-9-04	Adopt(T)	7-1-04
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580-040-0277	7-23-04	Amend	9-1-04	581-001-0120	3-5-04	Adopt(T)	4-1-04
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580-040-0301	6-9-04	Adopt	7-1-04	581-015-0900	1-15-04	Amend	2-1-04
580-040-0302	6-9-04	Adopt	7-1-04	581-015-0935	1-15-04	Amend	2-1-04
580-040-0303	6-9-04	Adopt	7-1-04	581-015-0938	1-15-04	Amend	2-1-04
580-040-0304	6-9-04	Adopt	7-1-04	581-015-0940	1-15-04	Amend	2-1-04
580-040-0305	6-9-04	Adopt	7-1-04	581-015-0960	1-15-04	Amend	2-1-04
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580-040-0310	6-9-04	Adopt	7-1-04	581-015-0980	1-15-04	Amend	2-1-04
580-040-0311	6-9-04	Adopt	7-1-04	581-015-0990	1-15-04	Amend	2-1-04
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581-045-0023	1-1-04	Amend	2-1-04	582-020-0100	1-30-04	Amend	3-1-04
581-045-0026	1-1-04	Amend	2-1-04	582-020-0110	1-30-04	Amend	3-1-04
581-045-0032	1-1-04	Amend	2-1-04	582-020-0110	8-5-04	Amend	9-1-04
581-045-0065	1-1-04	Amend	2-1-04	582-020-0120	1-30-04	Amend	3-1-04
581-045-0068	1-1-04	Amend	2-1-04	582-020-0125	1-30-04	Adopt	3-1-04
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581-051-0400	10-10-04	Amend	9-1-04	582-030-0008	3-12-04	Amend	4-1-04
581-051-0500	10-10-04	Amend	9-1-04	582-030-0010	3-12-04	Amend	4-1-04
581-051-0510	10-10-04	Amend	9-1-04	582-030-0020	3-12-04	Amend	4-1-04
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582-020-0050	1-30-04	Amend	3-1-04	582-085-0020	12-31-03	Amend	2-1-04
582-020-0060	1-30-04	Amend	3-1-04	582-085-0020	8-5-04	Repeal	9-1-04
582-020-0070	1-30-04	Amend	3-1-04	582-085-0040	8-5-04	Repeal	9-1-04
582-020-0080	1-30-04	Amend	3-1-04	582-085-0050	8-5-04	Repeal	9-1-04

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582-090-0010	8-5-04	Amend	9-1-04	584-100-0011	3-17-04	Adopt	5-1-04
582-090-0020	4-2-04	Amend	5-1-04	584-100-0016	3-17-04	Adopt	5-1-04
582-090-0030	4-2-04	Amend	5-1-04	584-100-0021	3-17-04	Adopt	5-1-04
582-090-0050	4-2-04	Repeal	5-1-04	584-100-0023	3-17-04	Adopt	5-1-04
582-100-0010	8-5-04	Repeal	9-1-04	584-100-0026	3-17-04	Adopt	5-1-04
582-100-0020	8-5-04	Repeal	9-1-04	584-100-0026	5-14-04	Amend(T)	6-1-04
582-100-0030	8-5-04	Repeal	9-1-04	584-100-0026	8-25-04	Amend	10-1-04
582-100-0040	8-5-04	Amend	9-1-04	584-100-0031	3-17-04	Adopt	5-1-04
583-030-0010	2-11-04	Amend(T)	3-1-04	584-100-0036	3-17-04	Adopt	5-1-04
583-030-0020	2-11-04	Amend(T)	3-1-04	584-100-0036	5-14-04	Amend(T)	6-1-04
583-030-0021	1-14-04	Amend	2-1-04	584-100-0036	8-25-04	Amend	10-1-04
583-030-0030	1-14-04	Amend	2-1-04	584-100-0037	5-14-04	Adopt(T)	6-1-04
583-030-0035	2-11-04	Amend(T)	3-1-04	584-100-0037	8-25-04	Adopt	10-1-04
583-030-0041	2-11-04	Amend(T)	3-1-04	584-100-0041	3-17-04	Adopt	5-1-04
583-030-0042	2-11-04	Amend(T)	3-1-04	584-100-0046	3-17-04	Adopt	5-1-04
583-030-0045	1-14-04	Amend	2-1-04	584-100-0051	3-17-04	Adopt	5-1-04
583-030-0046	2-11-04	Amend(T)	3-1-04	584-100-0056	3-17-04	Adopt	5-1-04
583-040-0025	2-13-04	Amend	3-1-04	584-100-0061	3-17-04	Adopt	5-1-04
583-050-0031	5-14-04	Amend	6-1-04	584-100-0066	3-17-04	Adopt	5-1-04
584-017-0042	3-17-04	Adopt(T)	5-1-04	584-100-0071	3-17-04	Adopt	5-1-04
584-017-0042	8-25-04	Adopt	10-1-04	584-100-0071	10-20-04	Amend(T)	12-1-04
584-017-0185	8-25-04	Amend	10-1-04	584-100-0091	3-17-04	Adopt	5-1-04
584-036-0017	3-17-04	Amend	5-1-04	584-100-0096	3-17-04	Adopt	5-1-04
584-036-0055	8-25-04	Amend	10-1-04	584-100-0101	3-17-04	Adopt	5-1-04
584-036-0062	5-14-04	Amend	6-1-04	584-100-0106	3-17-04	Adopt	5-1-04
584-036-0067	3-17-04	Adopt(T)	5-1-04	584-100-0111	3-17-04	Adopt	5-1-04
584-036-0067	8-25-04	Adopt	10-1-04	585-010-0020	10-8-04	Amend	11-1-04
584-040-0005	3-17-04	Amend(T)	5-1-04	585-010-0310	10-8-04	Amend	11-1-04
584-040-0005	8-25-04	Amend	10-1-04	589-002-0100	7-1-04	Amend	8-1-04
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584-052-0032	8-25-04	Adopt	10-1-04	603-011-0369	11-8-04	Adopt	12-1-04
584-052-0033	8-25-04	Adopt	10-1-04	603-011-0371	11-8-04	Adopt	12-1-04
584-060-0001	8-25-04	Amend	10-1-04	603-011-0373	11-8-04	Adopt	12-1-04
584-060-0002	8-25-04	Adopt	10-1-04	603-011-0374	11-8-04	Adopt	12-1-04
584-060-0005	8-25-04	Amend	10-1-04	603-011-0377	11-8-04	Adopt	12-1-04
584-060-0011	10-20-04	Amend(T)	12-1-04	603-011-0378	11-8-04	Adopt	12-1-04
584-060-0161	8-25-04	Amend	10-1-04	603-011-0379	11-8-04	Adopt	12-1-04
584-060-0161	10-20-04	Amend(T)	12-1-04	603-013-0600	2-13-04	Amend	3-1-04
584-060-0162	8-25-04	Adopt	10-1-04	603-013-0602	2-13-04	Amend	3-1-04
584-060-0171	5-14-04	Amend	6-1-04	603-013-0604	2-13-04	Amend	3-1-04
584-060-0181	8-25-04	Amend	10-1-04	603-013-0616	2-13-04	Amend	3-1-04
584-060-0210	9-10-04	Amend(T)	10-1-04	603-014-0016	1-23-04	Amend	3-1-04
584-060-0210(T)	9-20-04	Suspend	11-1-04	603-016-0471	2-13-04	Repeal	3-1-04
584-070-0130	9-10-04	Adopt(T)	10-1-04	603-016-0476	2-13-04	Repeal	3-1-04
584-070-0130	10-20-04	Amend(T)	12-1-04	603-016-0481	2-13-04	Repeal	3-1-04
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603-022-0315	10-28-04	Repeal	12-1-04	603-027-0405	3-26-04	Repeal	5-1-04
603-022-0325	10-28-04	Amend	12-1-04	603-027-0410	6-28-04	Amend	8-1-04
603-022-0330	10-28-04	Amend	12-1-04	603-027-0635	6-28-04	Amend	8-1-04
603-022-0340	10-28-04	Amend	12-1-04	603-027-0640	3-26-04	Amend	5-1-04
603-022-0345	10-28-04	Amend	12-1-04	603-027-0640	6-28-04	Amend	8-1-04
603-022-0515	10-28-04	Amend	12-1-04	603-027-0680	6-28-04	Amend	8-1-04
603-022-0530	10-28-04	Amend	12-1-04	603-027-0700	6-28-04	Amend	8-1-04
603-022-0600	10-28-04	Amend	12-1-04	603-051-0801	2-13-04	Repeal	3-1-04
603-022-0605	10-28-04	Amend	12-1-04	603-051-0802	2-13-04	Repeal	3-1-04
603-022-0610	10-28-04	Repeal	12-1-04	603-051-0810	2-13-04	Repeal	3-1-04
603-022-0615	10-28-04	Repeal	12-1-04	603-051-0812	2-13-04	Repeal	3-1-04
603-022-0620	10-28-04	Repeal	12-1-04	603-051-0814	2-13-04	Repeal	3-1-04
603-022-0625	10-28-04	Repeal	12-1-04	603-051-0816	2-13-04	Repeal	3-1-04
603-022-0630	10-28-04	Repeal	12-1-04	603-051-0818	2-13-04	Repeal	3-1-04
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603-022-0640	10-28-04	Repeal	12-1-04	603-051-0821	2-13-04	Repeal	3-1-04
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603-022-0650	10-28-04	Repeal	12-1-04	603-051-0825	2-13-04	Repeal	3-1-04
603-022-0655	10-28-04	Repeal	12-1-04	603-051-0827	2-13-04	Repeal	3-1-04
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603-022-0670	10-28-04	Repeal	12-1-04	603-051-0856	6-1-04	Amend	7-1-04
603-022-0675	10-28-04	Repeal	12-1-04	603-051-0857	6-1-04	Amend	7-1-04
603-022-0680	10-28-04	Repeal	12-1-04	603-051-0858	6-1-04	Amend	7-1-04
603-022-0685	10-28-04	Repeal	12-1-04	603-051-0859	6-1-04	Amend	7-1-04
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603-022-0800	10-28-04	Repeal	12-1-04	603-052-0332	2-13-04	Repeal	3-1-04
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603-022-0820	10-28-04	Repeal	12-1-04	603-052-0345	2-13-04	Repeal	3-1-04
603-022-0825	10-28-04	Repeal	12-1-04	603-052-0400	2-13-04	Repeal	3-1-04
603-022-0830	10-28-04	Repeal	12-1-04	603-052-0425	2-13-04	Repeal	3-1-04
603-022-0835	10-28-04	Repeal	12-1-04	603-052-0810	2-13-04	Repeal	3-1-04
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603-027-0180	6-28-04	Amend	8-1-04	603-077-0105	8-10-04	Amend	9-1-04
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603-077-0131	8-10-04	Amend	9-1-04	608-010-0020	1-2-04	Amend	2-1-04
603-077-0133	8-10-04	Amend	9-1-04	608-030-0010	1-2-04	Adopt	2-1-04
603-077-0137	8-10-04	Amend	9-1-04	608-030-0020	1-2-04	Adopt	2-1-04
603-077-0155	8-10-04	Amend	9-1-04	608-030-0030	1-2-04	Adopt	2-1-04
603-077-0165	8-10-04	Amend	9-1-04	608-030-0040	1-2-04	Adopt	2-1-04
603-077-0175	8-10-04	Amend	9-1-04	611-030-0010	1-15-04	Adopt	2-1-04
603-077-0177	8-10-04	Amend	9-1-04	611-030-0020	1-15-04	Adopt	2-1-04
603-077-0180	8-10-04	Amend	9-1-04	611-030-0030	1-15-04	Adopt	2-1-04
603-077-0190	8-10-04	Amend	9-1-04	611-030-0040	1-15-04	Adopt	2-1-04
603-077-0195	8-10-04	Amend	9-1-04	617-010-0090	1-16-04	Adopt	2-1-04
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603-095-2900	6-17-04	Adopt	8-1-04	617-030-0020	1-16-04	Adopt	2-1-04
603-095-2920	6-17-04	Adopt	8-1-04	617-030-0030	1-16-04	Adopt	2-1-04
603-095-2940	6-17-04	Adopt	8-1-04	617-030-0040	1-16-04	Adopt	2-1-04
603-095-2960	6-17-04	Adopt	8-1-04	620-010-0050	1-14-04	Adopt	2-1-04
603-095-3400	6-17-04	Adopt	8-1-04	620-030-0010	1-14-04	Adopt	2-1-04
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603-095-3440	6-17-04	Adopt	8-1-04	620-030-0030	1-14-04	Adopt	2-1-04
603-095-3460	6-17-04	Adopt	8-1-04	620-030-0040	1-14-04	Adopt	2-1-04
603-095-3500	6-17-04	Adopt	8-1-04	622-001-0000	7-30-04	Amend	9-1-04
603-095-3520	6-17-04	Adopt	8-1-04	622-001-0005	7-30-04	Amend	9-1-04
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603-095-3700	1-23-04	Adopt	3-1-04	624-010-0020	1-16-04	Amend	2-1-04
603-095-3720	1-23-04	Adopt	3-1-04	624-010-0030	1-16-04	Amend	2-1-04
603-095-3740	1-23-04	Adopt	3-1-04	624-010-0050	1-16-04	Adopt	2-1-04
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629-065-0005	5-4-04	Amend	6-1-04	635-006-0210	12-1-03	Amend(T)	1-1-04
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629-065-0220	5-4-04	Adopt	6-1-04	635-006-0213	5-1-04	Amend	6-1-04
629-065-0400	5-4-04	Amend	6-1-04	635-006-0215	5-1-04	Amend	6-1-04
629-065-0410	5-4-04	Adopt	6-1-04	635-006-0232	2-1-04	Amend	2-1-04
629-065-0500	5-4-04	Repeal	6-1-04	635-006-0850	1-1-04	Amend	1-1-04
629-670-0300	2-10-04	Amend	3-1-04	635-006-0850	3-23-04	Amend	5-1-04
629-670-0310	2-10-04	Amend	3-1-04	635-006-0910	1-31-04	Amend(T)	3-1-04
629-670-0315	2-10-04	Amend	3-1-04	635-006-0910	3-23-04	Amend	5-1-04
629-672-0210	2-10-04	Amend	3-1-04	635-006-0910(T)	3-23-04	Repeal	5-1-04
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635-001-0301	5-1-04	Amend	6-1-04	635-010-0015	5-1-04	Amend	6-1-04
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635-003-0003	5-1-04	Amend	6-1-04	635-011-0101	1-1-04	Amend	1-1-04
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635-003-0076	5-15-04	Amend(T)	6-1-04	635-013-0004	1-1-04	Amend	1-1-04
635-003-0076	5-24-04	Amend(T)	7-1-04	635-013-0004	7-23-04	Amend(T)	9-1-04
635-003-0076	6-19-04	Amend(T)	8-1-04	635-013-0004	8-13-04	Amend(T)	9-1-04
635-003-0076	7-1-04	Amend(T)	8-1-04	635-013-0004	9-4-04	Amend(T)	10-1-04
635-003-0076	7-8-04	Amend(T)	8-1-04	635-013-0004(T)	8-13-04	Suspend	9-1-04
635-003-0076	7-16-04	Amend(T)	8-1-04	635-013-0004(T)	9-4-04	Suspend	10-1-04
635-003-0076	7-19-04	Amend(T)	9-1-04	635-014-0080	1-1-04	Amend	1-1-04
635-003-0076	8-4-04	Amend(T)	9-1-04	635-014-0090	12-11-03	Amend(T)	1-1-04
635-003-0076	9-1-04	Amend(T)	10-1-04	635-014-0090	1-1-04	Amend	1-1-04
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635-003-0076(T)	7-1-04	Suspend	8-1-04	635-014-0090	10-1-04	Amend(T)	10-1-04
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635-003-0076(T)	7-16-04	Suspend	8-1-04	635-014-0090	10-18-04	Amend(T)	12-1-04
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635-003-0076(T)	9-1-04	Suspend	10-1-04	635-014-0090(T)	10-4-04	Suspend	11-1-04
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635-019-0090	5-22-04	Amend(T)	7-1-04	635-041-0075(T)	10-13-04	Suspend	11-1-04
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635-021-0090	1-1-04	Amend	1-1-04	635-041-0090	5-11-04	Amend(T)	6-1-04
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635-023-0090	6-27-04	Amend(T)	8-1-04	635-041-0095	7-21-04	Amend(T)	9-1-04
635-023-0090	7-3-04	Amend(T)	8-1-04	635-041-0095(T)	6-23-04	Suspend	8-1-04
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635-023-0125	5-1-04	Amend(T)	6-1-04	635-042-0022	3-18-04	Amend(T)	5-1-04
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635-023-0135	4-24-04	Adopt(T)	6-1-04	635-042-0031(T)	8-16-04	Suspend	10-1-04
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635-042-0145	8-3-04	Amend(T)	9-1-04	635-050-0130	7-13-04	Amend	8-1-04
635-042-0145	10-19-04	Amend(T)	12-1-04	635-050-0140	7-13-04	Amend	8-1-04
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635-042-0145(T)	10-19-04	Suspend	12-1-04	635-050-0170	7-13-04	Amend	8-1-04
635-042-0160	2-13-04	Amend	3-1-04	635-050-0180	5-1-04	Amend	6-1-04
635-042-0160	3-12-04	Amend(T)	4-1-04	635-050-0180	7-13-04	Amend	8-1-04
635-042-0160	3-18-04	Amend(T)	5-1-04	635-050-0183	7-13-04	Amend	8-1-04
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635-042-0160	8-3-04	Amend(T)	9-1-04	635-051-0048	8-18-04	Amend	10-1-04
635-042-0160	9-19-04	Amend(T)	11-1-04	635-052-0000	8-18-04	Amend	10-1-04
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635-042-0170	9-19-04	Amend(T)	11-1-04	635-054-0000	8-18-04	Amend(T)	10-1-04
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635-067-0041	1-1-04	Adopt	1-1-04	635-500-1850	12-15-03	Amend	1-1-04
635-068-0000	1-19-04	Amend	1-1-04	635-500-1920	12-15-03	Amend	1-1-04
635-068-0000	6-16-04	Amend	8-1-04	635-500-1930	12-15-03	Amend	1-1-04
635-069-0000	2-2-04	Amend	1-1-04	635-500-3120	12-15-03	Amend	1-1-04
635-069-0000	6-16-04	Amend	8-1-04	635-500-6000	12-15-03	Adopt	1-1-04
635-070-0000	12-24-03	Amend(T)	2-1-04	635-500-6010	12-15-03	Adopt	1-1-04
635-070-0000	2-2-04	Amend(T)	3-1-04	635-500-6020	12-15-03	Adopt	1-1-04
635-070-0000	4-1-04	Amend	1-1-04	635-500-6030	12-15-03	Adopt	1-1-04
635-070-0000	6-16-04	Amend	8-1-04	635-500-6040	12-15-03	Adopt	1-1-04
635-070-0000	10-18-04	Amend(T)	12-1-04	635-500-6050	12-15-03	Adopt	1-1-04
635-070-0005	2-2-04	Amend(T)	3-1-04	635-500-6060	12-15-03	Adopt	1-1-04
635-070-0010	12-24-03	Amend(T)	2-1-04	641-030-0010	1-15-04	Adopt	1-1-04
635-070-0012	10-18-04	Amend(T)	12-1-04	641-030-0020	1-15-04	Adopt	1-1-04
635-071-0000	1-1-04	Amend	1-1-04	641-030-0030	1-15-04	Adopt	1-1-04
635-071-0000	1-13-04	Amend(T)	2-1-04	642-010-0020	1-15-04	Amend	1-1-04
635-071-0000	6-16-04	Amend	8-1-04	642-030-0010	1-15-04	Adopt	1-1-04
635-071-0000	10-13-04	Amend(T)	11-1-04	642-030-0020	1-15-04	Adopt	1-1-04
635-071-0005	1-13-04	Amend(T)	2-1-04	642-030-0030	1-15-04	Adopt	1-1-04
635-071-0005	10-13-04	Amend(T)	11-1-04	643-010-0030	1-16-04	Adopt	3-1-04
635-072-0000	1-1-04	Amend	1-1-04	643-030-0010	1-16-04	Adopt	3-1-04
635-073-0000	12-24-03	Amend(T)	2-1-04	643-030-0020	1-16-04	Adopt	3-1-04
635-073-0000	2-2-04	Amend	1-1-04	643-030-0030	1-16-04	Adopt	3-1-04
635-073-0000	6-16-04	Amend	8-1-04	643-030-0040	1-16-04	Adopt	3-1-04
635-073-0060	12-24-03	Amend(T)	2-1-04	644-010-0005	1-8-04	Amend	2-1-04
635-073-0065	6-16-04	Adopt	8-1-04	644-010-0010	1-8-04	Amend	2-1-04
635-073-0070	1-1-04	Amend	1-1-04	644-010-0015	1-8-04	Amend	2-1-04
635-073-0070	6-16-04	Amend	8-1-04	644-010-0020	1-8-04	Amend	2-1-04
635-073-0090	1-1-04	Amend	1-1-04	644-010-0025	1-8-04	Amend	2-1-04
635-075-0005	1-1-04	Amend	1-1-04	644-030-0010	1-8-04	Adopt	2-1-04
635-075-0015	1-1-04	Amend	1-1-04	644-030-0020	1-8-04	Adopt	2-1-04
635-075-0020	1-1-04	Amend	1-1-04	644-030-0030	1-8-04	Adopt	2-1-04
635-075-0029	1-1-04	Amend	1-1-04	644-030-0040	1-8-04	Adopt	2-1-04
635-078-0001	1-1-04	Amend	1-1-04	645-010-0020	1-16-04	Amend	2-1-04
635-078-0005	1-1-04	Amend	1-1-04	645-030-0010	1-16-04	Adopt	2-1-04
635-078-0008	1-1-04	Amend	1-1-04	645-030-0020	1-16-04	Adopt	2-1-04
635-080-0030	1-1-04	Amend	1-1-04	645-030-0030	1-16-04	Adopt	2-1-04
635-080-0031	1-1-04	Amend	1-1-04	645-030-0040	1-16-04	Adopt	2-1-04
635-090-0140	7-13-04	Amend	8-1-04	646-010-0030	1-16-04	Adopt	2-1-04
635-090-0150	7-13-04	Amend	8-1-04	646-030-0010	1-16-04	Adopt	2-1-04
635-090-0160	7-13-04	Amend	8-1-04	646-030-0020	1-16-04	Adopt	2-1-04
635-100-0136	5-1-04	Amend	6-1-04	646-030-0020	4-8-04	Amend	5-1-04
635-120-0001	3-5-04	Amend	4-1-04	646-030-0030	1-16-04	Adopt	2-1-04
635-120-0005	3-5-04	Amend	4-1-04	646-030-0040	1-16-04	Adopt	2-1-04
635-120-0010	3-5-04	Amend	4-1-04	647-010-0010	6-1-04	Amend	6-1-04
635-120-0015	3-5-04	Amend	4-1-04	647-010-0020	1-16-04	Amend	2-1-04
635-120-0020	3-5-04	Amend	4-1-04	647-015-0010	1-16-04	Adopt	2-1-04
635-135-0001	8-18-04	Adopt	10-1-04	647-015-0020	1-16-04	Adopt	2-1-04
635-135-0005	8-18-04	Adopt	10-1-04	647-015-0030	1-16-04	Adopt	2-1-04
635-135-0010	8-18-04	Adopt	10-1-04	655-015-0010	1-16-04	Adopt	2-1-04
635-135-0015	8-18-04	Adopt	10-1-04	655-015-0020	1-16-04	Adopt	2-1-04
635-135-0020	8-18-04	Adopt	10-1-04	655-015-0030	1-16-04	Adopt	2-1-04
635-200-0050	5-1-04	Amend	6-1-04	656-030-0010	1-1-04	Adopt	1-1-04
635-300-0001	5-1-04	Amend	6-1-04	656-030-0020	1-1-04	Adopt	1-1-04
635-425-0020	5-1-04	Amend	6-1-04	656-030-0030	1-1-04	Adopt	1-1-04
635-500-1820	12-15-03	Amend	1-1-04	656-030-0040	1-1-04	Adopt	1-1-04

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657-030-0020	1-15-04	Adopt	1-1-04	660-033-0020	4-30-04	Amend	6-1-04
657-030-0030	1-15-04	Adopt	1-1-04	660-033-0090	4-30-04	Amend	6-1-04
658-010-0005	12-4-03	Amend	1-1-04	660-033-0120	4-30-04	Amend	6-1-04
658-010-0006	12-4-03	Amend	1-1-04	660-033-0130	4-30-04	Amend	6-1-04
658-010-0007	12-4-03	Adopt	1-1-04	660-033-0135	4-30-04	Amend	6-1-04
658-030-0010	12-4-03	Adopt	1-1-04	660-034-0000	5-7-04	Amend	6-1-04
658-030-0020	12-4-03	Adopt	1-1-04	660-034-0040	5-7-04	Amend	6-1-04
658-030-0030	12-4-03	Adopt	1-1-04	660-037-0030	5-7-04	Amend	6-1-04
660-001-0000	5-7-04	Amend	6-1-04	664-010-0020	1-15-04	Amend	1-1-04
660-001-0310	5-17-04	Am. & Ren.	7-1-04	664-015-0010	1-15-04	Adopt	1-1-04
660-001-0315	5-17-04	Am. & Ren.	7-1-04	664-015-0020	1-15-04	Adopt	1-1-04
660-002-0010	5-7-04	Amend	6-1-04	664-015-0030	1-15-04	Adopt	1-1-04
660-003-0025	5-7-04	Amend	6-1-04	668-010-0010	1-15-04	Amend	2-1-04
660-004-0005	5-7-04	Amend	6-1-04	668-030-0010	1-15-04	Adopt	2-1-04
660-004-0010	5-7-04	Amend	6-1-04	668-030-0020	1-15-04	Adopt	2-1-04
660-004-0018	5-7-04	Amend	6-1-04	668-030-0030	1-15-04	Adopt	2-1-04
660-004-0020	5-7-04	Amend	6-1-04	668-030-0040	1-15-04	Adopt	2-1-04
660-004-0022	5-7-04	Amend	6-1-04	669-010-0015	1-13-04	Amend	2-1-04
660-004-0035	5-7-04	Amend	6-1-04	669-010-0020	1-13-04	Amend	2-1-04
660-004-0040	5-7-04	Amend	6-1-04	669-010-0025	1-13-04	Amend	2-1-04
660-006-0015	5-7-04	Amend	6-1-04	669-010-0030	1-13-04	Amend	2-1-04
660-006-0025	5-7-04	Amend	6-1-04	669-010-0040	1-13-04	Amend	2-1-04
660-008-0000	5-7-04	Amend	6-1-04	669-010-0050	1-13-04	Adopt	2-1-04
660-008-0005	5-7-04	Amend	6-1-04	669-030-0010	1-13-04	Adopt	2-1-04
660-012-0045	5-7-04	Amend	6-1-04	669-030-0020	1-13-04	Adopt	2-1-04
660-012-0055	5-7-04	Amend	6-1-04	669-030-0030	1-13-04	Adopt	2-1-04
660-012-0070	5-7-04	Amend	6-1-04	669-030-0040	1-13-04	Adopt	2-1-04
660-013-0030	5-7-04	Amend	6-1-04	670-010-0020	1-15-04	Amend	2-1-04
660-013-0070	5-7-04	Amend	6-1-04	670-030-0010	1-15-04	Adopt	2-1-04
660-013-0080	5-7-04	Amend	6-1-04	670-030-0020	1-15-04	Adopt	2-1-04
660-013-0160	5-7-04	Amend	6-1-04	670-030-0030	1-15-04	Adopt	2-1-04
660-014-0000	5-17-04	Amend	7-1-04	679-010-0000	1-20-04	Amend	3-1-04
660-014-0010	5-17-04	Amend	7-1-04	679-010-0010	1-20-04	Amend	3-1-04
660-014-0020	5-17-04	Repeal	7-1-04	679-010-0030	1-20-04	Amend	3-1-04
660-014-0030	5-17-04	Amend	7-1-04	679-010-0050	1-20-04	Adopt	3-1-04
660-014-0040	5-17-04	Amend	7-1-04	679-010-0060	1-20-04	Adopt	3-1-04
660-016-0005	5-7-04	Amend	6-1-04	679-030-0010	1-20-04	Adopt	3-1-04
660-016-0010	5-7-04	Amend	6-1-04	679-030-0020	1-20-04	Adopt	3-1-04
660-017-0000	5-7-04	Amend	6-1-04	679-030-0030	1-20-04	Adopt	3-1-04
660-018-0005	5-7-04	Amend	6-1-04	679-030-0040	1-20-04	Adopt	3-1-04
660-018-0150	5-7-04	Adopt	6-1-04	690-003-0000	6-15-04	Repeal	7-1-04
660-020-0060	5-7-04	Amend	6-1-04	690-003-0010	6-15-04	Repeal	7-1-04
660-020-0065	5-7-04	Amend	6-1-04	690-003-0020	6-15-04	Repeal	7-1-04
660-023-0090	5-7-04	Amend	6-1-04	690-011-0220	6-15-04	Repeal	7-1-04
660-023-0140	5-7-04	Amend	6-1-04	690-014-0005	7-1-04	Amend	7-1-04
660-023-0180	6-25-04	Amend	8-1-04	690-014-0020	7-1-04	Amend	7-1-04
660-023-0190	5-7-04	Amend	6-1-04	690-014-0030	7-1-04	Amend	7-1-04
660-025-0010	5-7-04	Amend	6-1-04	690-014-0050	7-1-04	Amend	7-1-04
660-025-0040	5-7-04	Amend	6-1-04	690-014-0080	7-1-04	Amend	7-1-04
660-025-0120	5-7-04	Amend	6-1-04	690-014-0090	7-1-04	Adopt	7-1-04
660-025-0130	5-7-04	Amend	6-1-04	690-014-0100	7-1-04	Amend	7-1-04
660-025-0140	5-7-04	Amend	6-1-04	690-014-0110	7-1-04	Adopt	7-1-04
660-025-0150	5-7-04	Amend	6-1-04	690-014-0150	7-1-04	Repeal	7-1-04
660-025-0160	5-7-04	Amend	6-1-04	690-014-0170	7-1-04	Amend	7-1-04
660-025-0175	5-7-04	Amend	6-1-04	690-014-0190	7-1-04	Amend	7-1-04

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690-014-0220	7-1-04	Amend	7-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
690-017-0010	11-5-04	Amend	12-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
690-017-0100	11-5-04	Amend	12-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
690-017-0400	11-5-04	Amend	12-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
690-018-0010	11-5-04	Amend	12-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
690-018-0012	11-5-04	Amend	12-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
690-018-0014	11-5-04	Amend	12-1-04	690-502-0160	12-4-03	Amend	1-1-04
690-018-0020	11-5-04	Amend	12-1-04	690-502-0210	12-4-03	Adopt	1-1-04
690-018-0025	11-5-04	Adopt	12-1-04	690-502-0215	6-15-04	Adopt	7-1-04
690-018-0040	11-5-04	Amend	12-1-04	695-001-0000	2-1-05	Amend	12-1-04
690-018-0050	11-5-04	Amend	12-1-04	695-001-0005	2-1-05	Amend	12-1-04
690-018-0062	11-5-04	Amend	12-1-04	695-005-0010	2-1-05	Adopt	12-1-04
690-018-0090	11-5-04	Amend	12-1-04	695-005-0020	2-1-05	Adopt	12-1-04
690-026-0005	6-15-04	Repeal	7-1-04	695-005-0030	2-1-05	Adopt	12-1-04
690-026-0010	6-15-04	Repeal	7-1-04	695-005-0040	2-1-05	Adopt	12-1-04
690-026-0015	6-15-04	Repeal	7-1-04	695-005-0050	2-1-05	Adopt	12-1-04
690-026-0020	6-15-04	Repeal	7-1-04	695-005-0060	2-1-05	Adopt	12-1-04
690-026-0025	6-15-04	Repeal	7-1-04	695-005-0070	2-1-05	Adopt	12-1-04
690-026-0030	6-15-04	Repeal	7-1-04	695-005-0080	2-1-05	Adopt	12-1-04
690-200-0028	4-1-04	Adopt	5-1-04	695-010-0010	2-1-05	Adopt	12-1-04
690-200-0050	6-15-04	Amend	7-1-04	695-010-0020	2-1-05	Adopt	12-1-04
690-205-0005	6-15-04	Amend	7-1-04	695-010-0030	2-1-05	Adopt	12-1-04
690-205-0175	6-15-04	Amend	7-1-04	695-010-0040	2-1-05	Adopt	12-1-04
690-205-0200	6-15-04	Amend	7-1-04	695-010-0050	2-1-05	Adopt	12-1-04
690-205-0210	6-15-04	Amend	7-1-04	695-010-0060	2-1-05	Adopt	12-1-04
690-240-0005	6-15-04	Amend	7-1-04	695-010-0070	2-1-05	Adopt	12-1-04
690-240-0010	6-15-04	Amend	7-1-04	695-010-0080	2-1-05	Adopt	12-1-04
690-240-0035	6-15-04	Amend	7-1-04	695-010-0090	2-1-05	Adopt	12-1-04
690-240-0055	6-15-04	Amend	7-1-04	695-010-0100	2-1-05	Adopt	12-1-04
690-240-0340	6-15-04	Amend	7-1-04	695-015-0020	2-1-05	Adopt	12-1-04
690-240-0375	6-15-04	Amend	7-1-04	695-015-0030	2-1-05	Adopt	12-1-04
690-240-0395	6-15-04	Amend	7-1-04	695-015-0070	2-1-05	Adopt	12-1-04
690-240-0525	6-15-04	Amend	7-1-04	695-015-0130	2-1-05	Adopt	12-1-04
690-310-0040	6-15-04	Amend	7-1-04	695-020-0010	2-1-05	Repeal	12-1-04
690-310-0060	6-15-04	Amend	7-1-04	695-020-0020	1-26-04	Amend	3-1-04
690-310-0150	6-15-04	Amend	7-1-04	695-020-0020	4-12-04	Amend	5-1-04
690-310-0160	6-15-04	Amend	7-1-04	695-020-0020	2-1-05	Repeal	12-1-04
690-310-0180	6-15-04	Amend	7-1-04	695-020-0030	2-1-05	Repeal	12-1-04
690-310-0220	6-15-04	Amend	7-1-04	695-020-0040	2-1-05	Repeal	12-1-04
690-340-0030	6-15-04	Amend	7-1-04	695-020-0045	2-1-05	Repeal	12-1-04
690-380-0010	11-5-04	Amend	12-1-04	695-020-0050	2-1-05	Repeal	12-1-04
690-380-0090	11-5-04	Amend	12-1-04	695-020-0051	2-1-05	Repeal	12-1-04
690-380-0100	11-5-04	Amend	12-1-04	695-020-0052	2-1-05	Repeal	12-1-04
690-380-2110	11-5-04	Amend	12-1-04	695-020-0053	2-1-05	Repeal	12-1-04
690-380-2130	3-17-04	Amend	5-1-04	695-020-0054	2-1-05	Repeal	12-1-04
690-380-3000	11-5-04	Amend	12-1-04	695-020-0055	2-1-05	Repeal	12-1-04
690-380-3100	11-5-04	Amend	12-1-04	695-020-0056	4-12-04	Repeal	5-1-04
690-380-3200	11-5-04	Amend	12-1-04	695-020-0057	4-12-04	Repeal	5-1-04
690-380-4000	11-5-04	Amend	12-1-04	695-020-0058	4-12-04	Repeal	5-1-04
690-380-4010	11-5-04	Amend	12-1-04	695-020-0060	2-1-05	Repeal	12-1-04
690-380-5000	11-5-04	Amend	12-1-04	695-020-0070	2-1-05	Repeal	12-1-04
690-380-8000	3-17-04	Amend	5-1-04	695-020-0080	2-1-05	Repeal	12-1-04
690-380-8002	3-17-04	Adopt	5-1-04	695-020-0090	2-1-05	Repeal	12-1-04
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690-380-8010	3-17-04	Amend	5-1-04	695-020-0092	2-1-05	Repeal	12-1-04

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695-020-0093	2-1-05	Repeal	12-1-04	695-050-0030	2-1-05	Adopt	12-1-04
695-020-0094	1-26-04	Amend	3-1-04	695-050-0035	2-1-05	Adopt	12-1-04
695-020-0094	2-1-05	Repeal	12-1-04	695-050-0040	2-1-05	Adopt	12-1-04
695-020-0095	1-26-04	Amend	3-1-04	695-050-0045	2-1-05	Adopt	12-1-04
695-020-0095	2-1-05	Repeal	12-1-04	695-050-0050	2-1-05	Adopt	12-1-04
695-020-0096	1-26-04	Amend	3-1-04	731-001-0000	12-11-03	Amend	1-1-04
695-020-0096	2-1-05	Repeal	12-1-04	731-001-0005	2-23-04	Amend	4-1-04
695-020-0097	1-26-04	Amend	3-1-04	731-007-0050	1-20-04	Amend	3-1-04
695-020-0097	2-1-05	Repeal	12-1-04	731-007-0050(T)	1-20-04	Repeal	3-1-04
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695-020-0100	2-1-05	Repeal	12-1-04	731-060-0010	8-20-04	Adopt	10-1-04
695-020-0105	2-1-05	Repeal	12-1-04	731-060-0020	8-20-04	Adopt	10-1-04
695-020-0110	2-1-05	Repeal	12-1-04	731-060-0030	8-20-04	Adopt	10-1-04
695-025-0010	2-1-05	Repeal	12-1-04	731-060-0040	8-20-04	Adopt	10-1-04
695-025-0015	2-1-05	Repeal	12-1-04	731-060-0050	8-20-04	Adopt	10-1-04
695-025-0020	2-1-05	Repeal	12-1-04	731-060-0060	8-20-04	Adopt	10-1-04
695-025-0025	2-1-05	Repeal	12-1-04	731-060-0070	8-20-04	Adopt	10-1-04
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695-025-0040	2-1-05	Repeal	12-1-04	731-070-0020	8-26-04	Adopt	10-1-04
695-025-0045	2-1-05	Repeal	12-1-04	731-070-0030	8-26-04	Adopt	10-1-04
695-025-0050	2-1-05	Repeal	12-1-04	731-070-0040	8-26-04	Adopt	10-1-04
695-025-0090	2-1-05	Adopt	12-1-04	731-070-0050	8-26-04	Adopt	10-1-04
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695-030-0020	2-1-05	Repeal	12-1-04	731-070-0080	8-26-04	Adopt	10-1-04
695-030-0030	2-1-05	Repeal	12-1-04	731-070-0110	8-26-04	Adopt	10-1-04
695-030-0050	2-1-05	Adopt	12-1-04	731-070-0120	8-26-04	Adopt	10-1-04
695-030-0060	2-1-05	Adopt	12-1-04	731-070-0130	8-26-04	Adopt	10-1-04
695-030-0100	2-1-05	Adopt	12-1-04	731-070-0140	8-26-04	Adopt	10-1-04
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695-040-0010	9-20-04	Adopt	11-1-04	731-070-0230	8-26-04	Adopt	10-1-04
695-040-0020	4-12-04	Adopt	5-1-04	731-070-0240	8-26-04	Adopt	10-1-04
695-040-0020	9-20-04	Adopt	11-1-04	731-070-0250	8-26-04	Adopt	10-1-04
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695-040-0040	9-20-04	Adopt	11-1-04	731-070-0290	8-26-04	Adopt	10-1-04
695-040-0050	4-12-04	Adopt	5-1-04	731-070-0295	8-26-04	Adopt	10-1-04
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695-040-0060	4-12-04	Adopt	5-1-04	731-070-0310	8-26-04	Adopt	10-1-04
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695-040-0070	9-20-04	Adopt	11-1-04	731-070-0350	8-26-04	Adopt	10-1-04
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733-030-0036	11-15-04	Amend	12-1-04	734-051-0420	3-1-04	Repeal	4-1-04
733-030-0041	11-15-04	Amend	12-1-04	734-051-0430	3-1-04	Am. & Ren.	4-1-04
733-030-0045	11-15-04	Amend	12-1-04	734-051-0440	3-1-04	Am. & Ren.	4-1-04
733-030-0065	7-20-04	Amend(T)	9-1-04	734-051-0450	3-1-04	Am. & Ren.	4-1-04
733-030-0065	11-12-04	Amend	12-1-04	734-051-0460	3-1-04	Am. & Ren.	4-1-04
733-030-0095	11-15-04	Amend	12-1-04	734-051-0470	3-1-04	Am. & Ren.	4-1-04
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734-051-0020	3-1-04	Amend	4-1-04	735-018-0070	12-15-03	Amend	1-1-04
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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
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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	8-20-04	Repeal	10-1-04
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734-051-0210	3-1-04	Am. & Ren.	4-1-04	735-024-0020	6-24-04	Amend	8-1-04
734-051-0220	3-1-04	Repeal	4-1-04	735-024-0020	8-20-04	Repeal	10-1-04
734-051-0230	3-1-04	Am. & Ren.	4-1-04	735-024-0020(T)	6-24-04	Repeal	8-1-04
734-051-0235	3-1-04	Am. & Ren.	4-1-04	735-024-0025	8-20-04	Adopt	10-1-04
734-051-0240	3-1-04	Am. & Ren.	4-1-04	735-024-0030	8-20-04	Amend	10-1-04
734-051-0250	3-1-04	Am. & Ren.	4-1-04	735-024-0040	8-20-04	Repeal	10-1-04
734-051-0260	3-1-04	Am. & Ren.	4-1-04	735-024-0045	1-1-04	Adopt(T)	1-1-04
734-051-0270	3-1-04	Am. & Ren.	4-1-04	735-024-0045	6-24-04	Adopt	8-1-04
734-051-0280	3-1-04	Am. & Ren.	4-1-04	735-024-0045	8-20-04	Repeal	10-1-04
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735-040-0050	6-24-04	Amend	8-1-04	735-061-0050	1-15-04	Repeal	2-1-04
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735-040-0055	6-24-04	Amend	8-1-04	735-061-0080	1-15-04	Repeal	2-1-04
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735-040-0061	6-24-04	Amend	8-1-04	735-061-0110	1-15-04	Repeal	2-1-04
735-040-0061(T)	6-24-04	Repeal	8-1-04	735-061-0120	1-15-04	Repeal	2-1-04
735-040-0080	1-1-04	Amend(T)	1-1-04	735-061-0130	1-15-04	Repeal	2-1-04
735-040-0080	6-24-04	Amend	8-1-04	735-061-0140	1-15-04	Repeal	2-1-04
735-040-0080(T)	6-24-04	Repeal	8-1-04	735-061-0150	1-15-04	Repeal	2-1-04
735-040-0095	1-1-04	Amend(T)	1-1-04	735-061-0160	1-15-04	Repeal	2-1-04
735-040-0095	6-24-04	Amend	8-1-04	735-061-0170	1-15-04	Repeal	2-1-04
735-040-0095(T)	6-24-04	Repeal	8-1-04	735-061-0180	1-15-04	Repeal	2-1-04
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
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735-150-0050	8-20-04	Amend	10-1-04	736-002-0030	1-15-04	Adopt	2-1-04
735-150-0060	8-20-04	Amend	10-1-04	736-002-0040	1-15-04	Adopt	2-1-04
735-150-0070	1-1-04	Amend(T)	1-1-04	736-002-0060	1-15-04	Adopt	2-1-04
735-150-0070	5-24-04	Amend	7-1-04	736-002-0070	1-15-04	Adopt	2-1-04
735-150-0070(T)	5-24-04	Repeal	7-1-04	736-002-0080	1-15-04	Adopt	2-1-04
735-150-0080	8-20-04	Amend	10-1-04	736-002-0090	1-15-04	Adopt	2-1-04
735-150-0090	8-20-04	Amend	10-1-04	736-002-0100	1-15-04	Adopt	2-1-04
735-150-0100	8-20-04	Repeal	10-1-04	736-006-0100	5-5-04	Amend	6-1-04
735-150-0105	8-20-04	Amend	10-1-04	736-006-0105	5-5-04	Amend	6-1-04
735-150-0110	8-20-04	Amend	10-1-04	736-006-0110	5-5-04	Amend	6-1-04
735-150-0120	8-20-04	Amend	10-1-04	736-006-0115	5-5-04	Amend	6-1-04
735-150-0130	8-20-04	Amend	10-1-04	736-006-0120	5-5-04	Repeal	6-1-04
735-150-0140	8-20-04	Amend	10-1-04	736-006-0125	5-5-04	Amend	6-1-04
735-150-0160	8-20-04	Amend	10-1-04	736-006-0130	5-5-04	Am. & Ren.	6-1-04
735-150-0180	8-20-04	Amend	10-1-04	736-006-0135	5-5-04	Am. & Ren.	6-1-04
735-150-0190	8-20-04	Amend	10-1-04	736-006-0140	5-5-04	Adopt	6-1-04
735-150-0205	8-20-04	Adopt	10-1-04	736-010-0022	1-15-04	Amend(T)	2-1-04
735-150-0250	12-15-03	Adopt(T)	1-1-04	736-010-0022	4-15-04	Amend	4-1-04
735-150-0250	6-1-04	Adopt	7-1-04	736-010-0098	6-3-04	Amend	7-1-04
735-150-0250(T)	6-1-04	Repeal	7-1-04	736-010-0099	6-3-04	Amend	7-1-04
735-150-0260	12-15-03	Adopt(T)	1-1-04	736-010-0100	6-3-04	Amend	7-1-04
735-150-0260	6-1-04	Adopt	7-1-04	736-010-0115	6-3-04	Amend	7-1-04
735-150-0260(T)	6-1-04	Repeal	7-1-04	736-010-0120	6-3-04	Amend	7-1-04
735-154-0005	1-1-04	Adopt(T)	1-1-04	736-010-0125	6-3-04	Amend	7-1-04
735-154-0005	5-24-04	Adopt	7-1-04	736-018-0045	5-14-04	Amend	6-1-04
735-154-0005(T)	5-24-04	Repeal	7-1-04	736-018-0045	6-14-04	Amend	7-1-04
735-168-0020	7-15-04	Repeal	8-1-04	736-019-0000	9-15-04	Adopt	10-1-04
735-168-0030	7-15-04	Repeal	8-1-04	736-019-0020	9-15-04	Adopt	10-1-04
735-168-0040	7-15-04	Repeal	8-1-04	736-019-0040	9-15-04	Adopt	10-1-04
735-168-0070	7-15-04	Amend	8-1-04	736-019-0060	9-15-04	Adopt	10-1-04
735-170-0000	1-1-04	Amend	1-1-04	736-019-0080	9-15-04	Adopt	10-1-04
735-170-0010	1-1-04	Amend	1-1-04	736-019-0100	9-15-04	Adopt	10-1-04
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735-170-0070	1-1-04	Amend	1-1-04	736-100-0020	9-10-04	Amend	10-1-04
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735-170-0100	1-1-04	Amend	1-1-04	736-100-0040	9-10-04	Amend	10-1-04
735-170-0110	1-1-04	Adopt	1-1-04	736-100-0050	9-10-04	Amend	10-1-04
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736-100-0080	9-10-04	Amend	10-1-04	740-120-0010	1-1-04	Repeal	1-1-04
738-001-0001	2-17-04	Amend	4-1-04	740-120-0020	1-1-04	Repeal	1-1-04
738-001-0006	2-17-04	Amend	4-1-04	740-120-0030	1-1-04	Repeal	1-1-04
738-001-0025	2-17-04	Amend	4-1-04	740-120-0040	1-1-04	Repeal	1-1-04
738-001-0030	2-17-04	Amend	4-1-04	740-125-0010	1-1-04	Repeal	1-1-04
738-015-0015	2-17-04	Amend	4-1-04	740-125-0020	1-1-04	Repeal	1-1-04
738-025-0001	2-17-04	Amend	4-1-04	740-125-0030	1-1-04	Repeal	1-1-04
738-025-0010	2-17-04	Amend	4-1-04	740-125-0040	1-1-04	Repeal	1-1-04
738-030-0005	2-17-04	Repeal	4-1-04	740-130-0010	1-1-04	Repeal	1-1-04
738-030-0010	2-17-04	Repeal	4-1-04	740-130-0020	1-1-04	Repeal	1-1-04
738-030-0015	2-17-04	Repeal	4-1-04	740-130-0030	1-1-04	Repeal	1-1-04
738-030-0020	2-17-04	Repeal	4-1-04	740-130-0040	1-1-04	Repeal	1-1-04
738-030-0025	2-17-04	Repeal	4-1-04	740-130-0050	1-1-04	Repeal	1-1-04
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738-090-0040	2-17-04	Amend	4-1-04	740-130-0070	1-1-04	Repeal	1-1-04
738-100-0010	2-17-04	Amend	4-1-04	740-130-0080	1-1-04	Repeal	1-1-04
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738-110-0030	2-17-04	Repeal	4-1-04	740-135-0020	1-1-04	Repeal	1-1-04
738-110-0040	2-17-04	Repeal	4-1-04	740-135-0030	1-1-04	Repeal	1-1-04
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738-125-0015	5-24-04	Adopt	7-1-04	740-140-0020	1-1-04	Repeal	1-1-04
738-125-0020	5-24-04	Adopt	7-1-04	740-140-0030	1-1-04	Repeal	1-1-04
738-125-0025	5-24-04	Adopt	7-1-04	740-140-0040	1-1-04	Repeal	1-1-04
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738-125-0040	5-24-04	Adopt	7-1-04	740-145-0010	1-1-04	Repeal	1-1-04
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740-060-0055	6-29-04	Adopt	8-1-04	740-155-0010	1-1-04	Repeal	1-1-04
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741-020-0010	5-20-04	Adopt	7-1-04	801-001-0035	1-1-04	Adopt	2-1-04
741-020-0020	5-20-04	Adopt	7-1-04	801-001-0050	1-1-04	Adopt	2-1-04
741-020-0025	5-20-04	Adopt	7-1-04	801-005-0010	1-1-04	Amend	2-1-04
741-020-0030	5-20-04	Adopt	7-1-04	801-010-0010	1-1-04	Amend	2-1-04
741-020-0040	5-20-04	Adopt	7-1-04	801-010-0045	1-1-04	Amend	2-1-04
741-020-0050	5-20-04	Adopt	7-1-04	801-010-0050	1-1-04	Amend	2-1-04
741-020-0060	5-20-04	Adopt	7-1-04	801-010-0050	3-15-04	Amend(T)	4-1-04
741-020-0070	5-20-04	Adopt	7-1-04	801-010-0050	7-2-04	Amend(T)	8-1-04
741-020-0080	5-20-04	Adopt	7-1-04	801-010-0060	1-1-04	Amend	2-1-04
741-025-0010	5-20-04	Adopt	7-1-04	801-010-0075	1-1-04	Amend	2-1-04
741-025-0020	5-20-04	Adopt	7-1-04	801-010-0080	1-1-04	Amend	2-1-04
741-025-0025	5-20-04	Adopt	7-1-04	801-010-0085	1-1-04	Amend	2-1-04
741-025-0030	5-20-04	Adopt	7-1-04	801-010-0110	1-1-04	Amend	2-1-04
741-025-0040	5-20-04	Adopt	7-1-04	801-010-0115	1-1-04	Amend	2-1-04
741-025-0050	5-20-04	Adopt	7-1-04	801-010-0125	1-1-04	Amend	2-1-04
741-025-0060	5-20-04	Adopt	7-1-04	801-010-0345	1-1-04	Amend	2-1-04
741-025-0070	5-20-04	Adopt	7-1-04	801-020-0700	1-1-04	Amend	2-1-04
741-025-0080	5-20-04	Adopt	7-1-04	801-030-0005	1-1-04	Amend	2-1-04
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741-050-0030	3-24-04	Repeal	5-1-04	801-040-0070	1-1-04	Amend	2-1-04
741-050-0040	3-24-04	Repeal	5-1-04	801-040-0090	1-1-04	Amend	2-1-04
741-050-0050	3-24-04	Repeal	5-1-04	801-040-0100	1-1-04	Amend	2-1-04
741-050-0060	3-24-04	Repeal	5-1-04	801-040-0160	1-1-04	Amend	2-1-04
741-050-0070	3-24-04	Repeal	5-1-04	801-050-0080	1-1-04	Amend	2-1-04
741-050-0080	3-24-04	Repeal	5-1-04	806-001-0004	5-5-04	Amend	6-1-04
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741-050-0130	3-24-04	Repeal	5-1-04	806-010-0060	3-2-04	Amend	4-1-04
741-050-0140	3-24-04	Repeal	5-1-04	806-010-0080	5-5-04	Amend	6-1-04
741-050-0150	3-24-04	Repeal	5-1-04	806-010-0145	5-5-04	Amend	6-1-04
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808-003-0130	2-1-04	Amend	3-1-04	812-001-0020(T)	3-1-04	Repeal	4-1-04
808-003-0130	10-4-04	Amend	11-1-04	812-001-0020(T)	9-1-04	Repeal	10-1-04
808-003-0220	10-4-04	Adopt	11-1-04	812-001-0022	1-1-04	Adopt(T)	2-1-04
808-004-0210	1-1-04	Adopt	2-1-04	812-001-0022	3-1-04	Adopt	4-1-04
808-004-0320	2-1-04	Amend	3-1-04	812-001-0022	6-1-04	Amend	7-1-04
808-004-0400	2-1-04	Amend	3-1-04	812-001-0022(T)	3-1-04	Repeal	4-1-04
808-005-0020	2-1-04	Amend	3-1-04	812-001-0023	10-1-04	Adopt	11-1-04
808-008-0020	1-1-04	Amend(T)	2-1-04	812-001-0024	10-1-04	Adopt	11-1-04
808-008-0030	1-1-04	Amend(T)	2-1-04	812-002-0130	12-5-03	Adopt	1-1-04
808-008-0050	1-1-04	Adopt	2-1-04	812-002-0140	10-1-04	Amend	11-1-04
808-008-0060	1-1-04	Amend(T)	2-1-04	812-002-0190	10-1-04	Amend	11-1-04
808-008-0085	1-1-04	Amend(T)	2-1-04	812-002-0200	12-5-03	Amend	1-1-04
808-008-0140	1-1-04	Amend(T)	2-1-04	812-002-0240	12-5-03	Repeal	1-1-04
808-008-0240	1-1-04	Suspend	2-1-04	812-002-0240(T)	12-5-03	Repeal	1-1-04
808-008-0280	1-1-04	Amend(T)	2-1-04	812-002-0250	10-1-04	Adopt	11-1-04
808-008-0290	1-1-04	Adopt(T)	2-1-04	812-002-0380	2-2-04	Amend	3-1-04
808-008-0400	1-1-04	Amend(T)	2-1-04	812-002-0420	12-5-03	Amend	1-1-04
808-008-0420	1-1-04	Amend(T)	2-1-04	812-002-0420(T)	12-5-03	Repeal	1-1-04
808-008-0425	1-1-04	Amend(T)	2-1-04	812-002-0440	12-5-03	Amend	1-1-04
808-008-0430	1-1-04	Amend(T)	2-1-04	812-002-0530	6-1-04	Amend	7-1-04
808-008-0440	1-1-04	Amend(T)	2-1-04	812-002-0530	10-1-04	Amend	11-1-04
808-008-0460	1-1-04	Amend(T)	2-1-04	812-002-0540	12-5-03	Amend	1-1-04
808-008-0500	1-1-04	Amend(T)	2-1-04	812-002-0540(T)	12-5-03	Repeal	1-1-04
808-008-0510	1-1-04	Adopt(T)	2-1-04	812-003-0000	12-5-03	Amend	1-1-04
808-008-0520	1-1-04	Adopt(T)	2-1-04	812-003-0000	7-1-04	Amend	4-1-04
808-009-0020	2-1-04	Amend	3-1-04	812-003-0000	9-1-04	Amend	8-1-04
809-001-0000	6-23-04	Amend	8-1-04	812-003-0000(T)	12-5-03	Repeal	1-1-04
809-001-0005	4-6-04	Amend	5-1-04	812-003-0015	2-2-04	Amend	3-1-04
809-001-0005	6-23-04	Amend	8-1-04	812-003-0015	3-1-04	Amend	4-1-04
809-001-0035	4-6-04	Adopt(T)	5-1-04	812-003-0015	6-1-04	Amend	7-1-04
809-001-0035	6-23-04	Adopt	8-1-04	812-003-0020	12-5-03	Amend	1-1-04
809-003-0000	10-19-04	Amend	12-1-04	812-003-0020(T)	12-5-03	Repeal	1-1-04
809-010-0001	8-5-04	Amend	9-1-04	812-003-0025	12-5-03	Amend	1-1-04
809-030-0015	8-5-04	Amend	9-1-04	812-003-0025	9-1-04	Amend	8-1-04
809-050-0000	8-5-04	Amend	9-1-04	812-003-0025(T)	12-5-03	Repeal	1-1-04
809-050-0050	10-19-04	Adopt	12-1-04	812-003-0050	9-1-04	Amend	8-1-04

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812-004-0110	1-1-04	Amend(T)	2-1-04	812-010-0430	12-5-03	Amend	1-1-04
812-004-0110	3-1-04	Amend	4-1-04	812-010-0440	12-5-03	Amend	1-1-04
812-004-0110	6-1-04	Amend	7-1-04	812-010-0440	6-1-04	Amend	7-1-04
812-004-0110(T)	3-1-04	Repeal	4-1-04	812-010-0440	10-1-04	Amend	11-1-04
812-004-0195	10-1-04	Adopt	11-1-04	812-010-0460	12-5-03	Amend	1-1-04
812-004-0210	12-5-03	Adopt	1-1-04	812-010-0460	6-1-04	Amend	7-1-04
812-004-0250	1-1-04	Amend(T)	2-1-04	812-010-0460	10-1-04	Amend	11-1-04
812-004-0250	3-1-04	Amend	4-1-04	812-010-0500	12-5-03	Amend	1-1-04
812-004-0250	10-1-04	Amend	11-1-04	812-010-0500	6-1-04	Amend	7-1-04
812-004-0250(T)	3-1-04	Repeal	4-1-04	812-010-0500	10-1-04	Amend	11-1-04
812-004-0300	10-1-04	Amend	11-1-04	812-010-0510	12-5-03	Adopt	1-1-04
812-004-0320	12-5-03	Amend	1-1-04	812-010-0510	6-1-04	Amend	7-1-04
812-004-0320	10-1-04	Amend	11-1-04	812-010-0520	12-5-03	Adopt	1-1-04
812-004-0340	12-5-03	Amend	1-1-04	812-010-0520	6-1-04	Amend	7-1-04
812-004-0400	12-5-03	Amend	1-1-04	813-003-0005	5-20-04	Adopt(T)	7-1-04
812-004-0440	1-1-04	Amend(T)	2-1-04	813-003-0010	5-20-04	Adopt(T)	7-1-04
812-004-0440	3-1-04	Amend	4-1-04	813-003-0020	5-20-04	Adopt(T)	7-1-04
812-004-0440	10-1-04	Amend	11-1-04	813-003-0030	5-20-04	Adopt(T)	7-1-04
812-004-0440(T)	3-1-04	Repeal	4-1-04	813-003-0040	5-20-04	Adopt(T)	7-1-04
812-004-0510	10-1-04	Amend	11-1-04	813-003-0050	5-20-04	Adopt(T)	7-1-04
812-004-0520	10-1-04	Amend	11-1-04	813-003-0060	5-20-04	Adopt(T)	7-1-04
812-004-0535	12-5-03	Amend	1-1-04	813-003-0070	5-20-04	Adopt(T)	7-1-04
812-004-0535	3-1-04	Amend	4-1-04	813-300-0010	12-19-03	Amend	2-1-04
812-004-0540	3-1-04	Amend	4-1-04	813-300-0120	12-19-03	Amend	2-1-04
812-004-0550	3-1-04	Amend	4-1-04	813-310-0005	6-28-04	Adopt	8-1-04
812-004-0600	9-1-04	Amend	8-1-04	813-310-0010	6-28-04	Adopt	8-1-04
812-004-0600	10-1-04	Amend	11-1-04	813-310-0015	6-28-04	Adopt	8-1-04
812-005-0005	12-5-03	Amend	1-1-04	813-310-0020	6-28-04	Adopt	8-1-04
812-005-0005	9-1-04	Amend	8-1-04	813-310-0025	6-28-04	Adopt	8-1-04
812-006-0020	12-5-03	Amend	1-1-04	813-310-0030	6-28-04	Adopt	8-1-04
812-006-0050	9-1-04	Amend	10-1-04	813-310-0035	6-28-04	Adopt	8-1-04
812-008-0050	3-1-04	Amend	4-1-04	813-310-0040	6-28-04	Adopt	8-1-04
812-009-0100	3-1-04	Amend	4-1-04	813-310-0045	6-28-04	Adopt	8-1-04
812-009-0120	3-1-04	Amend	4-1-04	813-310-0050	6-28-04	Adopt	8-1-04
812-009-0160	10-1-04	Amend	11-1-04	813-310-0055	6-28-04	Adopt	8-1-04
812-010-0020	12-5-03	Amend	1-1-04	813-310-0060	6-28-04	Adopt	8-1-04
812-010-0020	6-1-04	Amend	7-1-04	813-310-0065	6-28-04	Adopt	8-1-04
812-010-0020	10-1-04	Amend	11-1-04	813-310-0070	6-28-04	Adopt	8-1-04
812-010-0030	12-5-03	Amend	1-1-04	813-310-0075	6-28-04	Adopt	8-1-04
812-010-0050	12-5-03	Adopt	1-1-04	813-310-0080	6-28-04	Adopt	8-1-04
812-010-0050	6-1-04	Amend	7-1-04	813-310-0085	6-28-04	Adopt	8-1-04
812-010-0060	12-5-03	Amend	1-1-04	813-310-0090	6-28-04	Adopt	8-1-04
812-010-0060	6-1-04	Amend	7-1-04	813-310-0095	6-28-04	Adopt	8-1-04
812-010-0060	10-1-04	Amend	11-1-04	813-310-0100	6-28-04	Adopt	8-1-04
812-010-0085	12-5-03	Amend	1-1-04	813-310-0105	6-28-04	Adopt	8-1-04
812-010-0140	12-5-03	Amend	1-1-04	813-310-0110	6-28-04	Adopt	8-1-04
812-010-0140	6-1-04	Amend	7-1-04	813-350-0030	4-8-04	Amend	5-1-04
812-010-0180	10-1-04	Amend	11-1-04	813-350-0030(T)	4-8-04	Repeal	5-1-04
812-010-0240	12-5-03	Repeal	1-1-04	817-001-0000	7-1-04	Repeal	8-1-04
812-010-0280	12-5-03	Amend	1-1-04	817-001-0005	7-1-04	Repeal	8-1-04
812-010-0290	12-5-03	Adopt	1-1-04	817-001-0020	7-1-04	Repeal	8-1-04
812-010-0400	12-5-03	Amend	1-1-04	817-001-0030	7-1-04	Repeal	8-1-04
812-010-0420	12-5-03	Amend	1-1-04	817-005-0005	7-1-04	Amend	8-1-04
812-010-0420	10-1-04	Amend	11-1-04	817-010-0007	7-1-04	Amend	8-1-04
812-010-0425	12-5-03	Amend	1-1-04	817-010-0014	7-1-04	Amend	8-1-04

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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	830-020-0040	11-1-04	Amend	11-1-04
817-040-0003	7-1-04	Amend	8-1-04	836-005-0107	5-7-04	Amend	6-1-04
817-055-0010	7-1-04	Repeal	8-1-04	836-009-0007	12-19-03	Amend	1-1-04
817-060-0020	7-1-04	Amend	8-1-04	836-011-0000	12-3-03	Amend	1-1-04
817-060-0030	7-1-04	Amend	8-1-04	836-014-0400	10-12-04	Adopt(T)	11-1-04
817-070-0005	7-1-04	Repeal	8-1-04	836-031-0755	1-1-04	Amend	2-1-04
817-080-0005	7-1-04	Amend	8-1-04	836-031-0760	1-1-04	Amend	2-1-04
817-090-0005	7-1-04	Repeal	8-1-04	836-031-0855	11-26-03	Adopt(T)	1-1-04
817-090-0008	7-1-04	Repeal	8-1-04	836-031-0855	5-15-04	Adopt	6-1-04
817-090-0015	7-1-04	Repeal	8-1-04	836-042-0045	1-1-04	Amend	1-1-04
817-090-0025	7-1-04	Amend	8-1-04	836-051-0101	1-1-04	Amend	2-1-04
817-090-0035	7-1-04	Amend	8-1-04	836-051-0106	1-1-04	Adopt	2-1-04
817-090-0045	7-1-04	Amend	8-1-04	836-051-0700	6-14-04	Adopt	7-1-04
817-090-0050	7-1-04	Amend	8-1-04	836-052-0700	2-3-04	Amend	3-1-04
817-090-0055	7-1-04	Amend	8-1-04	836-053-0430	2-20-04	Amend	4-1-04
817-090-0065	7-1-04	Amend	8-1-04	836-071-0180	12-19-03	Amend	1-1-04
817-090-0070	7-1-04	Amend	8-1-04	836-080-0090	1-1-05	Adopt	10-1-04
817-090-0075	7-1-04	Amend	8-1-04	836-080-0425	10-5-04	Amend	11-1-04
817-090-0080	7-1-04	Amend	8-1-04	836-080-0430	10-5-04	Amend	11-1-04
817-090-0085	7-1-04	Amend	8-1-04	836-080-0432	10-5-04	Repeal	11-1-04
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836-080-0438	10-5-04	Adopt	11-1-04	839-020-0150	2-1-04	Amend	2-1-04
837-012-0645	1-14-04	Amend	2-1-04	839-021-0355	7-29-04	Amend(T)	9-1-04
837-012-0720	1-14-04	Amend	2-1-04	839-050-0000	11-3-04	Amend	12-1-04
837-012-0830	1-14-04	Amend	2-1-04	839-050-0010	11-3-04	Amend	12-1-04
837-012-0850	1-14-04	Amend	2-1-04	839-050-0020	11-3-04	Amend	12-1-04
837-012-1210	1-14-04	Amend	2-1-04	839-050-0030	11-3-04	Amend	12-1-04
837-012-1220	1-14-04	Amend	2-1-04	839-050-0040	11-3-04	Amend	12-1-04
837-012-1230	11-10-04	Amend	12-1-04	839-050-0050	11-3-04	Amend	12-1-04
837-012-1260	1-14-04	Amend	2-1-04	839-050-0060	11-3-04	Amend	12-1-04
837-012-1290	1-14-04	Amend	2-1-04	839-050-0070	11-3-04	Amend	12-1-04
837-012-1300	1-14-04	Amend	2-1-04	839-050-0080	11-3-04	Amend	12-1-04
837-012-1320	1-14-04	Amend	2-1-04	839-050-0090	11-3-04	Amend	12-1-04
837-012-1320	11-10-04	Amend	12-1-04	839-050-0100	11-3-04	Amend	12-1-04
837-012-1340	1-14-04	Amend	2-1-04	839-050-0110	11-3-04	Amend	12-1-04
837-030-0130	1-14-04	Amend	2-1-04	839-050-0120	11-3-04	Amend	12-1-04
837-030-0220	1-14-04	Amend	2-1-04	839-050-0130	11-3-04	Amend	12-1-04
837-030-0230	1-14-04	Amend	2-1-04	839-050-0140	11-3-04	Amend	12-1-04
837-030-0240	1-14-04	Amend	2-1-04	839-050-0150	11-3-04	Amend	12-1-04
837-030-0250	1-14-04	Amend	2-1-04	839-050-0160	11-3-04	Amend	12-1-04
837-030-0280	1-14-04	Amend	2-1-04	839-050-0170	11-3-04	Amend	12-1-04
837-040-0001	10-1-04	Amend	5-1-04	839-050-0180	11-3-04	Amend	12-1-04
837-040-0010	10-1-04	Amend	5-1-04	839-050-0190	11-3-04	Amend	12-1-04
837-040-0140	10-1-04	Amend	5-1-04	839-050-0200	11-3-04	Amend	12-1-04
839-001-0000	7-27-04	Amend	9-1-04	839-050-0210	11-3-04	Amend	12-1-04
839-001-0200	1-1-04	Adopt	2-1-04	839-050-0220	11-3-04	Amend	12-1-04
839-001-0420	1-1-04	Amend	2-1-04	839-050-0230	11-3-04	Amend	12-1-04
839-001-0470	1-1-04	Amend	2-1-04	839-050-0240	11-3-04	Amend	12-1-04
839-001-0490	1-1-04	Adopt	2-1-04	839-050-0250	11-3-04	Amend	12-1-04
839-002-0002	7-27-04	Amend	9-1-04	839-050-0255	11-3-04	Amend	12-1-04
839-003-0025	10-25-04	Amend	12-1-04	839-050-0260	11-3-04	Amend	12-1-04
839-014-0020	7-27-04	Amend	9-1-04	839-050-0270	11-3-04	Amend	12-1-04
839-015-0000	7-27-04	Amend	9-1-04	839-050-0280	11-3-04	Amend	12-1-04
839-016-0000	7-27-04	Amend	9-1-04	839-050-0290	11-3-04	Amend	12-1-04
839-016-0700	1-5-04	Amend	2-1-04	839-050-0300	11-3-04	Amend	12-1-04
839-016-0700	4-15-04	Amend	5-1-04	839-050-0310	11-3-04	Amend	12-1-04
839-016-0700	7-1-04	Amend	8-1-04	839-050-0320	11-3-04	Amend	12-1-04
839-016-0700	10-1-04	Amend	11-1-04	839-050-0330	11-3-04	Amend	12-1-04
839-016-0750	5-1-04	Amend	6-1-04	839-050-0340	11-3-04	Amend	12-1-04
839-016-0750	5-19-04	Amend	7-1-04	839-050-0350	11-3-04	Amend	12-1-04
839-016-0750	5-24-04	Amend	7-1-04	839-050-0360	11-3-04	Amend	12-1-04
839-016-0750	6-24-04	Amend	8-1-04	839-050-0370	11-3-04	Amend	12-1-04
839-016-0750	7-15-04	Amend	8-1-04	839-050-0380	11-3-04	Amend	12-1-04
839-016-0750	10-19-04	Amend	12-1-04	839-050-0390	11-3-04	Repeal	12-1-04
839-016-0750	11-1-04	Amend	12-1-04	839-050-0400	11-3-04	Amend	12-1-04
839-016-0750	11-10-04	Amend	12-1-04	839-050-0410	11-3-04	Amend	12-1-04
839-017-0004	1-1-04	Amend	2-1-04	839-050-0420	11-3-04	Amend	12-1-04
839-017-0500	1-1-04	Adopt	2-1-04	839-050-0430	11-3-04	Amend	12-1-04
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839-017-0510	1-1-04	Adopt	2-1-04	845-001-0005	11-1-04	Amend	11-1-04
839-017-0515	1-1-04	Adopt	2-1-04	845-001-0007	11-1-04	Amend	11-1-04
839-017-0520	1-1-04	Adopt	2-1-04	845-003-0590	2-10-04	Amend	1-1-04
839-019-0000	7-27-04	Amend	9-1-04	845-003-0670	12-1-03	Amend	1-1-04
839-020-0027	1-1-04	Adopt	2-1-04	845-005-0304	1-1-04	Amend	2-1-04
839-020-0030	1-1-04	Amend	2-1-04	845-005-0326	11-1-04	Amend	11-1-04
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845-006-0335	4-9-04	Amend	5-1-04	847-080-0019	7-13-04	Amend	8-1-04
845-006-0347	5-19-04	Amend	7-1-04	850-001-0000	6-10-04	Amend	7-1-04
845-006-0365	11-1-04	Amend	11-1-04	850-010-0130	2-11-04	Amend	3-1-04
845-006-0430	4-1-04	Amend	5-1-04	850-010-0175	9-10-04	Adopt	10-1-04
845-006-0441	12-1-03	Amend	1-1-04	850-010-0210	6-10-04	Amend	7-1-04
845-007-0015	6-1-04	Amend	4-1-04	850-010-0212	6-10-04	Adopt	7-1-04
845-008-0045	7-1-04	Amend	8-1-04	850-010-0215	4-14-04	Amend	5-1-04
845-009-0010	11-1-04	Amend	11-1-04	850-010-0225	12-5-03	Amend	1-1-04
845-009-0015	12-1-03	Amend	1-1-04	850-010-0225	6-10-04	Amend	7-1-04
845-009-0015	11-1-04	Amend	11-1-04	850-010-0226	12-5-03	Amend	1-1-04
845-009-0020	11-1-04	Amend	11-1-04	850-010-0226	6-10-04	Amend	7-1-04
845-010-0920	11-1-04	Amend	11-1-04	851-001-0005	5-4-04	Amend	6-1-04
845-013-0001	11-1-04	Amend	11-1-04	851-001-0005	10-26-04	Amend	12-1-04
845-015-0115	11-1-04	Amend	11-1-04	851-001-0006	5-4-04	Amend	6-1-04
845-015-0140	3-21-04	Amend	3-1-04	851-001-0007	5-4-04	Amend	6-1-04
845-015-0155	7-1-04	Amend	8-1-04	851-001-0015	5-4-04	Amend	6-1-04
845-015-0199	5-1-04	Adopt(T)	6-1-04	851-001-0020	5-4-04	Amend	6-1-04
845-015-0199	10-29-04	Adopt	11-1-04	851-001-0030	5-4-04	Adopt	6-1-04
847-001-0000	7-13-04	Amend	8-1-04	851-002-0040	2-26-04	Amend	4-1-04
847-001-0005	7-13-04	Amend	8-1-04	851-002-0040	10-26-04	Amend	12-1-04
847-001-0015	7-13-04	Amend	8-1-04	851-002-0050	10-26-04	Amend	12-1-04
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847-005-0005	9-9-04	Amend	10-1-04	851-047-0000	2-26-04	Amend	4-1-04
847-008-0005	7-13-04	Amend	8-1-04	851-047-0010	2-26-04	Amend	4-1-04
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847-008-0015	7-13-04	Amend	8-1-04	851-047-0030	2-26-04	Amend	4-1-04
847-008-0022	7-13-04	Adopt	8-1-04	851-047-0040	2-26-04	Amend	4-1-04
847-008-0040	7-13-04	Amend	8-1-04	851-050-0000	5-12-04	Amend	6-1-04
847-008-0045	7-13-04	Amend	8-1-04	851-050-0004	5-12-04	Amend	6-1-04
847-008-0050	12-8-03	Amend	1-1-04	851-050-0006	5-12-04	Amend	6-1-04
847-008-0055	1-27-04	Amend	3-1-04	851-050-0131	12-9-03	Amend	1-1-04
847-008-0055	7-13-04	Amend	8-1-04	851-050-0131	2-26-04	Amend	4-1-04
847-010-0056	4-22-04	Amend	6-1-04	851-050-0131	5-4-04	Amend	6-1-04
847-010-0063	4-22-04	Amend	6-1-04	851-050-0131	7-13-04	Amend	8-1-04
847-010-0073	4-22-04	Adopt	6-1-04	851-050-0131	10-26-04	Amend	12-1-04
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847-012-0000	10-20-04	Amend	12-1-04	851-050-0133	5-12-04	Repeal	6-1-04
847-015-0030	3-1-04	Amend	6-1-04	851-050-0134	12-23-03	Amend(T)	2-1-04
847-020-0130	4-22-04	Amend(T)	6-1-04	851-050-0134	5-12-04	Repeal	6-1-04
847-020-0130	7-13-04	Amend	8-1-04	851-050-0138	5-12-04	Amend	6-1-04
847-020-0170	1-27-04	Amend	3-1-04	851-050-0140	5-12-04	Amend	6-1-04
847-020-0170	4-22-04	Amend	6-1-04	851-050-0145	12-23-03	Amend(T)	2-1-04
847-020-0170	7-13-04	Amend	8-1-04	851-050-0145	5-12-04	Repeal	6-1-04
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847-035-0030	4-22-04	Amend(T)	6-1-04	851-050-0155	5-12-04	Amend	6-1-04
847-035-0030	6-11-04	Amend(T)	7-1-04	851-050-0161	12-23-03	Adopt(T)	2-1-04
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851-061-0030	2-12-04	Amend	3-1-04	855-021-0005	6-1-04	Amend	7-1-04
851-061-0040	2-12-04	Amend	3-1-04	855-021-0010	6-1-04	Amend	7-1-04
851-061-0050	2-12-04	Amend	3-1-04	855-021-0015	6-1-04	Repeal	7-1-04
851-061-0070	2-12-04	Amend	3-1-04	855-021-0025	6-1-04	Amend	7-1-04
851-061-0080	2-12-04	Amend	3-1-04	855-021-0030	6-1-04	Amend	7-1-04
851-061-0080	7-13-04	Amend	8-1-04	855-021-0035	6-1-04	Repeal	7-1-04
851-061-0090	2-12-04	Amend	3-1-04	855-021-0050	6-1-04	Amend	7-1-04
851-061-0090	7-13-04	Amend	8-1-04	855-031-0015	3-12-04	Amend	4-1-04
851-061-0100	2-12-04	Amend	3-1-04	855-031-0045	3-12-04	Amend	4-1-04
851-061-0110	2-12-04	Amend	3-1-04	855-043-0200	5-24-04	Repeal	7-1-04
851-061-0110	7-13-04	Amend	8-1-04	855-043-0205	5-24-04	Repeal	7-1-04
851-061-0130	2-12-04	Adopt	3-1-04	855-043-0210	12-31-03	Adopt(T)	2-1-04
851-062-0005	2-12-04	Adopt	3-1-04	855-043-0210	6-1-04	Adopt	7-1-04
851-062-0010	2-12-04	Amend	3-1-04	855-050-0035	11-15-04	Amend(T)	11-1-04
851-062-0010	2-20-04	Amend	4-1-04	855-050-0070	11-8-04	Amend	12-1-04
851-062-0015	2-12-04	Adopt	3-1-04	858-010-0001	8-30-04	Amend	10-1-04
851-062-0016	2-12-04	Adopt	3-1-04	858-010-0002	8-30-04	Adopt	10-1-04
851-062-0020	2-12-04	Amend	3-1-04	858-010-0005	8-30-04	Amend	10-1-04
851-062-0040	2-12-04	Repeal	3-1-04	858-010-0007	8-30-04	Amend	10-1-04
851-062-0050	2-12-04	Amend	3-1-04	858-010-0015	8-30-04	Amend	10-1-04
851-062-0055	2-12-04	Adopt	3-1-04	858-010-0020	8-30-04	Amend	10-1-04
851-062-0060	2-12-04	Repeal	3-1-04	858-010-0030	3-2-04	Amend(T)	4-1-04
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851-062-0070	2-20-04	Amend	4-1-04	858-010-0041	8-30-04	Amend	10-1-04
851-062-0075	2-12-04	Adopt	3-1-04	858-010-0050	8-30-04	Amend	10-1-04
851-062-0080	2-12-04	Amend	3-1-04	858-010-0055	8-30-04	Amend	10-1-04
851-062-0090	2-12-04	Amend	3-1-04	858-010-0065	8-30-04	Amend	10-1-04
851-062-0100	2-12-04	Amend	3-1-04	858-010-0075	8-30-04	Amend	10-1-04
851-062-0110	2-12-04	Amend	3-1-04	858-020-0015	8-30-04	Amend	10-1-04
851-062-0120	2-12-04	Amend	3-1-04	858-020-0045	8-30-04	Amend	10-1-04
851-062-0130	2-12-04	Amend	3-1-04	858-020-0055	8-30-04	Amend	10-1-04
851-063-0010	2-12-04	Amend	3-1-04	858-020-0085	8-30-04	Amend	10-1-04
851-063-0020	2-12-04	Amend	3-1-04	858-030-0005	8-30-04	Amend	10-1-04
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851-063-0040	2-12-04	Amend	3-1-04	858-040-0095	8-30-04	Amend	10-1-04
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851-063-0100	2-12-04	Amend	3-1-04	860-012-0100	1-8-04	Adopt	2-1-04
852-001-0001	3-8-04	Amend	4-1-04	860-012-0190	1-8-04	Adopt	2-1-04
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860-034-0010	6-2-04	Amend	7-1-04	860-037-0040	1-29-04	Amend	3-1-04
860-034-0140	1-9-04	Amend(T)	2-1-04	860-037-0045	1-29-04	Amend	3-1-04
860-034-0140	6-2-04	Amend	7-1-04	860-037-0050	1-29-04	Amend	3-1-04
860-034-0580	10-28-04	Amend	12-1-04	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
860-035-0110	1-15-04	Repeal	2-1-04	860-037-0120	1-29-04	Amend	3-1-04
860-035-0120	1-15-04	Repeal	2-1-04	860-037-0125	1-29-04	Amend	3-1-04
860-035-0130	1-15-04	Repeal	2-1-04	860-037-0205	1-29-04	Amend	3-1-04
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860-036-0080	4-9-04	Amend	5-1-04	860-037-0235	1-29-04	Amend	3-1-04
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860-036-0370	4-9-04	Adopt	5-1-04	860-037-0308	12-10-03	Adopt(T)	1-1-04
860-036-0380	12-10-03	Adopt(T)	1-1-04	860-037-0308	4-9-04	Adopt	5-1-04
860-036-0380	4-9-04	Adopt	5-1-04	860-037-0309	12-10-03	Adopt(T)	1-1-04
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860-036-0420	4-9-04	Adopt	5-1-04	860-037-0407	12-10-03	Adopt(T)	1-1-04
860-036-0505	4-9-04	Amend	5-1-04	860-037-0407	4-9-04	Adopt	5-1-04
860-036-0739	4-9-04	Adopt	5-1-04	860-037-0410	1-29-04	Amend	3-1-04
860-036-0757	12-10-03	Adopt(T)	1-1-04	860-037-0415	1-29-04	Amend	3-1-04
860-036-0757	4-9-04	Adopt	5-1-04	860-037-0425	1-29-04	Amend	3-1-04
860-036-0900	12-10-03	Amend(T)	1-1-04	860-037-0430	1-29-04	Amend	3-1-04
860-036-0900	4-9-04	Amend	5-1-04	860-037-0435	1-29-04	Amend	3-1-04
860-036-0905	12-10-03	Amend(T)	1-1-04	860-037-0440	1-29-04	Amend	3-1-04
860-036-0905	4-9-04	Amend	5-1-04	860-037-0445	1-29-04	Amend	3-1-04
860-036-0910	12-10-03	Amend(T)	1-1-04	860-037-0450	1-29-04	Amend	3-1-04
860-036-0910	4-9-04	Amend	5-1-04	860-037-0505	1-29-04	Amend	3-1-04
860-036-0915	12-10-03	Amend(T)	1-1-04	860-037-0510	1-29-04	Amend	3-1-04
860-036-0915	4-9-04	Amend	5-1-04	860-037-0515	1-29-04	Amend	3-1-04
860-037-0001	1-29-04	Amend	3-1-04	860-037-0517	1-29-04	Adopt	3-1-04
860-037-0010	1-29-04	Amend	3-1-04	860-037-0520	1-29-04	Amend	3-1-04
860-037-0015	1-29-04	Amend	3-1-04	860-037-0525	1-29-04	Amend	3-1-04
860-037-0020	1-29-04	Amend	3-1-04	860-037-0530	1-29-04	Amend	3-1-04
860-037-0025	1-29-04	Amend	3-1-04	860-037-0535	1-29-04	Amend	3-1-04
860-037-0030	1-29-04	Amend	3-1-04	860-037-0540	1-29-04	Amend	3-1-04
860-037-0035	1-9-04	Amend(T)	2-1-04	860-037-0545	1-29-04	Amend	3-1-04

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860-037-0547	4-9-04	Adopt	5-1-04	875-010-0075	7-13-04	Amend	8-1-04
860-037-0550	1-29-04	Amend	3-1-04	877-020-0020	12-1-03	Amend	1-1-04
860-037-0555	1-29-04	Amend	3-1-04	918-001-0000	10-1-04	Amend	11-1-04
860-037-0560	1-29-04	Amend	3-1-04	918-001-0010	10-1-04	Amend	11-1-04
860-037-0565	1-29-04	Amend	3-1-04	918-001-0031	7-1-04	Adopt	8-1-04
860-037-0567	1-29-04	Adopt	3-1-04	918-001-0210	10-1-04	Amend	11-1-04
860-037-0570	12-10-03	Adopt(T)	1-1-04	918-008-0030	1-29-04	Amend(T)	3-1-04
860-037-0570	4-9-04	Adopt	5-1-04	918-008-0030	9-30-04	Suspend	11-1-04
860-037-0605	1-29-04	Amend	3-1-04	918-020-0090	7-1-04	Amend	7-1-04
860-037-0610	1-29-04	Amend	3-1-04	918-020-0090	10-1-04	Amend	9-1-04
860-037-0615	1-29-04	Amend	3-1-04	918-020-0091	7-1-04	Adopt	7-1-04
860-037-0620	1-29-04	Amend	3-1-04	918-030-0030	10-1-04	Adopt	11-1-04
860-037-0625	1-29-04	Amend	3-1-04	918-030-0100	4-1-04	Adopt	3-1-04
860-037-0630	1-29-04	Amend	3-1-04	918-030-0200	7-1-04	Adopt	7-1-04
860-038-0005	8-31-04	Amend	10-1-04	918-030-0320	7-1-04	Adopt	8-1-04
860-038-0220	8-31-04	Amend	10-1-04	918-030-0325	7-1-04	Adopt	8-1-04
860-038-0275	8-31-04	Adopt	10-1-04	918-030-0900	4-1-04	Adopt	3-1-04
860-038-0480	8-31-04	Amend	10-1-04	918-050-0010	1-1-04	Amend	2-1-04
860-038-0540	1-15-04	Amend	2-1-04	918-050-0020	1-1-04	Amend	2-1-04
860-038-0580	12-11-03	Amend	1-1-04	918-050-0500	10-1-04	Repeal	11-1-04
863-001-0007	5-3-04	Amend	6-1-04	918-050-0510	10-1-04	Repeal	11-1-04
863-015-0015	1-1-04	Amend(T)	2-1-04	918-050-0520	10-1-04	Repeal	11-1-04
863-015-0015	5-3-04	Amend	6-1-04	918-098-0500	10-1-04	Amend	9-1-04
863-015-0020	5-3-04	Amend	6-1-04	918-100-0000	10-1-04	Amend	11-1-04
863-015-0025	5-3-04	Amend	6-1-04	918-100-0010	10-1-04	Amend	11-1-04
863-015-0050	5-3-04	Amend	6-1-04	918-100-0020	10-1-04	Amend	11-1-04
863-015-0055	1-15-04	Amend(T)	2-1-04	918-100-0040	10-1-04	Amend	11-1-04
863-015-0055	5-3-04	Amend	6-1-04	918-100-0050	10-1-04	Amend	11-1-04
863-015-0065	5-3-04	Amend	6-1-04	918-100-0060	10-1-04	Amend	11-1-04
863-015-0080	1-1-04	Amend(T)	2-1-04	918-100-0065	10-1-04	Adopt	11-1-04
863-015-0080	5-3-04	Amend	6-1-04	918-225-0691	3-8-04	Amend(T)	4-1-04
863-015-0085	5-3-04	Amend	6-1-04	918-225-0691	7-1-04	Amend	8-1-04
863-015-0180	5-3-04	Amend	6-1-04	918-225-0691(T)	7-1-04	Repeal	8-1-04
863-015-0200	1-1-04	Amend(T)	2-1-04	918-225-0920	3-8-04	Amend(T)	4-1-04
863-015-0200	5-3-04	Amend	6-1-04	918-225-0920	7-1-04	Amend	8-1-04
863-015-0270	5-3-04	Repeal	6-1-04	918-225-0920(T)	7-1-04	Repeal	8-1-04
863-050-0000	1-1-04	Adopt	2-1-04	918-251-0090	4-1-04	Amend	5-1-04
863-050-0015	1-1-04	Amend	2-1-04	918-261-0036	4-1-04	Adopt	5-1-04
863-050-0020	1-1-04	Amend	2-1-04	918-261-0037	4-1-04	Adopt	5-1-04
863-050-0020	5-3-04	Amend	6-1-04	918-261-0038	4-1-04	Adopt	5-1-04
863-050-0025	1-1-04	Amend	2-1-04	918-261-0039	4-1-04	Adopt	5-1-04
863-050-0035	1-15-04	Adopt(T)	2-1-04	918-282-0017	10-1-04	Adopt	10-1-04
863-050-0035	5-3-04	Adopt	6-1-04	918-282-0185	10-1-04	Adopt	10-1-04
863-050-0040	1-1-04	Adopt	2-1-04	918-282-0290	10-1-04	Amend	10-1-04
863-050-0050	1-1-04	Amend	2-1-04	918-306-0010	4-1-04	Amend	5-1-04
863-050-0055	1-1-04	Amend	2-1-04	918-306-0340	4-1-04	Amend	5-1-04
863-050-0060	1-1-04	Amend	2-1-04	918-306-0350	4-1-04	Amend	5-1-04
863-050-0065	1-1-04	Amend	2-1-04	918-306-0360	4-1-04	Amend	5-1-04
863-050-0100	1-1-04	Amend	2-1-04	918-306-0370	4-1-04	Repeal	5-1-04
863-050-0108	1-1-04	Repeal	2-1-04	918-306-0380	4-1-04	Amend	5-1-04
863-050-0110	1-1-04	Repeal	2-1-04	918-306-0390	4-1-04	Amend	5-1-04
863-050-0115	1-1-04	Amend	2-1-04	918-306-0400	4-1-04	Amend	5-1-04
863-050-0115	5-3-04	Amend	6-1-04	918-306-0410	4-1-04	Amend	5-1-04
863-050-0150	1-1-04	Amend	2-1-04	918-309-0000	4-1-04	Amend	5-1-04
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918-309-0210	10-1-04	Amend	11-1-04	918-460-0015	10-1-04	Amend	11-1-04
918-309-0220	4-1-04	Amend	5-1-04	918-460-0015	10-1-04	Amend	11-1-04
918-320-0315	10-1-04	Repeal	10-1-04	918-460-0016	10-1-04	Adopt	11-1-04
918-400-0333	10-1-04	Adopt	10-1-04	918-480-0002	10-1-04	Adopt	11-1-04
918-400-0335	10-1-04	Repeal	10-1-04	918-480-0005	10-1-04	Amend	10-1-04
918-400-0340	10-1-04	Amend	10-1-04	918-480-0010	10-1-04	Amend	10-1-04
918-400-0345	10-1-04	Repeal	10-1-04	918-480-0020	10-1-04	Amend	10-1-04
918-400-0350	10-1-04	Repeal	10-1-04	918-480-0130	10-1-04	Adopt	9-1-04
918-400-0355	10-1-04	Repeal	10-1-04	918-674-0025	1-1-04	Amend	1-1-04
918-400-0360	10-1-04	Repeal	10-1-04	918-674-0033	1-1-04	Amend	1-1-04
918-400-0365	10-1-04	Repeal	10-1-04	918-695-0030	10-1-04	Amend	10-1-04
918-400-0370	10-1-04	Repeal	10-1-04	918-780-0035	1-1-04	Adopt	2-1-04
918-400-0375	10-1-04	Repeal	10-1-04	918-780-0080	10-1-04	Amend	10-1-04
918-400-0380	10-1-04	Adopt	10-1-04	918-780-0120	1-1-04	Repeal	2-1-04
918-400-0385	10-1-04	Adopt	10-1-04	918-780-0130	10-1-04	Amend	11-1-04
918-400-0390	10-1-04	Adopt	10-1-04	918-780-0140	10-1-04	Amend	11-1-04
918-400-0395	10-1-04	Adopt	10-1-04	951-001-0000	3-15-04	Adopt(T)	4-1-04
918-400-0800	10-1-04	Amend	10-1-04	951-001-0000	7-15-04	Adopt	8-1-04
918-440-0010	10-1-04	Amend	9-1-04	951-001-0005	4-15-04	Adopt	4-1-04
918-440-0015	1-1-04	Amend	1-1-04	972-010-0030	1-16-04	Adopt	2-1-04
918-440-0040	1-1-04	Amend	1-1-04	972-030-0010	1-16-04	Adopt	2-1-04
918-440-0040	10-1-04	Amend	9-1-04	972-030-0020	1-16-04	Adopt	2-1-04
918-440-0050	1-1-04	Amend	1-1-04	972-030-0030	1-16-04	Adopt	2-1-04
918-460-0010	10-1-04	Amend	11-1-04	972-030-0040	1-16-04	Adopt	2-1-04
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